Supreme Court, U.S.
D
AUG 9 1993
OFFICE OF THE CLERK

93-222

CASE NO _____

SUPREME COURT OF THE UNITED STATES

October term 1993

SAMUEL N. McCOO, JR.,

Pro se Petitioner,

V.

DISTRICT OF COLUMBIA,

Respondent.

CIVIL ACTION ON
WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE
DISTRICT OF COLUMBIA CIRCUIT

"PETITION FOR WRIT OF CERTIORARI"

Samuel N. McCoo, Jr.,
Pro Se Petitioner
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985

EDITOR'S NOTE

THE FOLLOWING PAGES WERE POOR HARD COPY AT THE TIME OF FILMING. IF AND WHEN A BETTER COPY CAN BE OBTAINED, A NEW FICHE WILL BE ISSUED.

Questions presented for Review

I. DO THE ACTIONS AND RULING OF A MAGISTRATE JUDGE, WHICH DEVIATE FROM THE LAW AND THE TRUE RECORD, FOR FAVOR OR DISFAVOR OF A PARTY, THEN SANCTIONED BY A FEDERAL DISTRICT JUDGE AND FEDERAL APPELLATE JUDGES, OVERRIDE THE CONSTITUTION AND LAWS OF THE UNITED STATES, AND SUPREME COURT UNITED STATES RULINGS?

II. IF THE ANSWER TO THE ABOVE QUESTION IS "NO", THEN IS A UNITED STATES CITIZEN WHO IS NOT A CRIMINAL, ENTITLED TO RELIEF, FOR A PROPERLY BROUGHT AND SUPPORTED CIVIL CLAIM FOR DEPRIVATION OF CONSTITUTIONAL RIGHTS, AGAINST A MUNICIPAL CORPORATION, WHEN THE CHIEF OFFICERS OF THE CORPORATION DO NOT ANSWER TO THE COMPLAINT, ALLOW ADMITTANCE TO THE ALLEGATIONS, AND DO NOT OPPOSE THE RELIEF SOUGHT?

List of Parties to Proceeding

Samuel N McCoo, JR , Pro Se

Petitioner. Re: 92-7217 (Appellant, Pro se) Re: 91-3265 (Plaintiff, Pro se)

District of Columbia, Respondent is a municipal corporation. Re: 92-7217 (Appellee) Re: 91-3265 (Defendant).

Parties for the municipal corporation:

Last known Attorney of record for the respondent in the U S Court of Appeals:

Rosalyn Groce, Asst Corp. Counsel
Corporation Counsel, D C.
1350 Pennsylvania Avenue, N W
Washington, D C , 20004

Executive Officer and Mayor:

Sharon Pratt Kelly,
Mayor of the District of Columbia
Executive Office of the Mayor
One Judiciary Square
441 Fourth Street, N.W.
Washington, D.C., 20001

Legislative Officer and Acting Chairman:

John Ray, Acting Chairman
Council of the District of Columbia
1350 Pennsylvania Avenue, N W
Washington, D C , 20004

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	VI
REFERENCE TO THE OFFICIAL AND UNOFFICIAL OPINIONS	1-3
STATEMENT OF JURISDICTION	3
CONSTITUTIONAL, STATUTORY, REGULATIONS INVOLVED	3-29
Amendment IV	6
Amendment V	5
Amendment IX	5
Amendment XIV section 1	4
Amendment XIII section 1	4
Article six, Clause 2	3
U S C Title 28 Federal Rule of Civil Procedure 12	19-24
U S C Title 28 Federal Rule Civil Procedure 56	24-29
U S C Title 28 S 1331	6-7
U S C Title 28 S 1343	7-9
U S C Title 42 S 1981	12

U S C Title 42 S 1982 . . 12-13

U S C Title 42 S 1983 . . 13-14

U S C Title 42 S 1985(2) 14-15

U S C Title 42 S 1985(3) 16-17

U S C Title 42 S 1986 18-19

U S C Title 42 S 1988 9-11

CONCISE STATEMENT OF FACTS MATERIAL TO THE QUESTIONS PRESENTED 29-45

REASONS FOR ALLOWANCE OF WRIT OF CERTIORARI 46-53

CONCLUSION 53-54

APPENDIX

TABLE OF AUTHORITIES

Cases:	Page
Federal Nat. Morg. ass'n v. Cobb, N.D. Ind. 1990, 738 F.Supp. 1220	48
Howlet a minor, by Howlet v. Rose, 1990, ____ U.S. ___, 110 S.Ct. 2430, 2443-2444	47-48
Melzer v. Atlantic Research Corp., C.A. Va. 1964, 330 F.d2 946, certiorari denied 85 S.Ct. 78,80, 379 U.S. 841, 13 L.Ed. 2d 47	47
Ravettino v. City of San Diego, 160 P.sd 52, 70 Cal.App. 2d 37	45
U.S. v. New Wrinkle, 1952, 72 S.Ct. 350, 342 U.S. 371, 96 L.Ed. 417	47
Uxmal Corp. Limited v. Wall Industries, Inc., D.C.Fla. 1972, 55F.R.D. 219	48-49

REFERENCE TO OPINIONS BELOW

On September 10, 1992 Magistrate Judge Alan Kay, in the District Court for the District of Columbia, issued a report and recommendation, to grant respondent's motion to dismiss with prejudice for failure to state a claim, and denied judgment for the pro se plaintiff The magistrate judge stating a review upon the merits and the record, and cited District of Columbia law 1-601

On September 23, 1992 Judge Hogan issued an order adopting the magistrate Judge's report and recommendation, and stated a review upon the merits, the whole record, and District of Columbia Law, D.C Code 1601, and adopted the Magistrate Judge's report and recommendation viewed as an employment review

October 7, 1992 Judge Hogan issued an order denying relief to the pro se plaintiff from the adoption of the magistrate's report and recommendation. Stating that granting of relief was neither necessary or appropriate

On April 7, 1993, the U S. Court of Appeals for the District of Columbia granted motion for summary affirmance to respondent, and denied petitioner's "Motion for Stay Reversal" of a District Court order from the District Court of the District of Columbia Stating the merits of the parties are so clear as to warrant summary action.

On May 28, 1993 a timely made Petition for hearing in banc was denied and a rehearing was denied May 28, 1993 by the U.S. Court of Appeals

for the District of Columbia

----------*----------

STATEMENT OF JURISDICTION

Jurisdiction is founded upon U S C Title 28 section 1254

----------*----------

CONSTITUTIONAL STATUTORY AND REGULATORY PROVISIONS INVOLVED:

Article Six, Clause 2

"The Constitution, and the Laws of the United States which shall be made in pursuance thereof - Shall be the Supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any state to the contrary notwithstanding."

Amendment XIV Section 1

All persons born or naturalized and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws

Amendment XIII Section 1

Neither slavery nor involuntary servitude, except as punishment for a crime whereof the party shall have been duly convicted, shall exist within the United States, or any

place subject to their jurisdiction

Amendment IX

The enumeration in the Constitution of certain rights shall not be construed to deny or disparage others retained by the people.

Amendment V

No person shall be held to answer for a capitol, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb, nor shall be compelled in any criminal case to be a witness against

himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use without just compensation.

Amendment IV

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U S C. Title 28 section 1331
Federal Question

The District Courts shall have

original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.

The words "all civil actions" were substituted for "all suits of a civil nature, at common law or in equity" to conform to Rule 2 of the Federal Rules of Civil Procedure(1958).

U.S.C. Title 28 section 1343
Civil rights and elective franchise

(a) The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in

furtherance of any conspiracy mentioned in section 1985 title 42;

(2) To recover damages from any person who fails to prevent or aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;

(4) To recover damages or to secure equitable or other relief

under any Act of Congress providing for the protection of civil rights, including the right to vote

(b) For purposes of this section___

(1) The District of Columbia shall be considered to be a State; and

(2) any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia

Diversity of citizenship and amount in controversy immaterial in action under this section

U S C. TITLE 42 section 1988
PROCEEDINGS IN VINDICATION OF
CIVIL RIGHTS; ATTORNEY'S FEES.

The jurisdiction in civil and

criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, in so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the

Constitution of the United States, shall be extended to and govern said courts in the trial and disposition of the cause, and if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U S C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U S C. 2000 et seq.], the court in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs. (R.S. section 722; Pub. L. 96-559, section 2, Oct. 19, 1976, 90 stat. 2641; Pub. L. 96-481, title II, s 205(c), Oct. 21, 1980, 94 Stat. 2330.)

U S C. Title 42 section 1981
Equal rights under the law

All persons within the jurisdiction of the United States shall have the same right in every state and territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to the like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other. (R.S. 1977)

U.S.C. Title 42 section 1982
Property rights of citizens

All citizens of the United States shall have the same right, in every State and Territory, as is enjoyed by

white citizens thereof to inherit, purchase, lease, sell, hold, and convey real and personal property (R.S. 1978)

U.S.C. Title 42 section 1983
"Civil Action for Deprivation of Rights"

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

For the purpose of this section,

any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia. (R.S. 1979)

U.S.C. Title 42 Section 1985(2)
Conspiracy to interfere with civil rights.

Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully, or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment,

or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror, or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with the intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

U S C Title 42 Section 1985(3)
Conspiracy to interfere with
civil rights Depriving persons of
rights or privileges.

If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from giving his support or

advocacy in a legal manner, toward or in favor of the election for President or Vice-President, or as a Member of Congress of the United States; or to injure any citizen in his person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators. (R.S.1980)

U S C Title 42 section 1986
Action for neglect to prevent

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any

such wrongful act and neglect, the legal representatives of the deceased shall have such action therefore, and may recover not exceeding $5,000 damages therein, for the benefit of the widow, and if there be no widow, then for for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued. (R.S. 1981)

U.S.C. Title 28 Federal Rules of Civil Procedure Rule 12.

Defenses and Objections- When and How Presented-By Pleading or Motion- Motion for Judgment on Pleadings

(a) When Presented. A defendant shall serve an answer within 20 days

complaint upon that defendant, except when service is made under Rule 4(e) and a different time is prescribed in the order of the court under statute of the United States or in the statute or rule of court of the state. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim, or a reply to a counterclaim, within 60 days after service upon the United

States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

(b) How Presented. Every defense, in law or fact, to a claim for relief in any pleading, whether a claim, counterclaim, cross-claim, or third-

party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (6) failure to state a claim upon which relief can be granted. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion If a pleading sets forth a claim for relief to which the adverse party is not required to serve a responsive pleading, the adverse party may assert at the trial any defense in law or fact to that claim for relief. If on a motion asserting the defense numbered (6) to dismiss for failure to state a claim upon

which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such motion by Rule 56.

(c) Motion for Judgment on the Pleadings. After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters, matters outside the pleadings are presented to and not excluded by the court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be

given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

U.S.C. Title 28 Federal Rules of Civil Procedure Rule 56

Summary Judgment Procedure

(a) For Claimant. A party seeking to recover upon a claim, counterclaim, or cross-claim or to obtain a declaratory judgment may, at any time after expiration of 20 days from the commencement of the action or after service of a motion for summary judgment by the adverse party, move with or without supporting affidavits for a summary judgment in the party's favor upon all or any part thereof.

(b) For a Defending Party. A party against whom a claim,

counterclaim, or cross-claim is asserted or a declaratory judgment is sought may, at any time, move with or without supporting affidavits for a summary judgment in the party's favor as to all or any part thereof.

(c) Motion and Proceedings Thereon. The motion shall be served at least 10 days before the time fixed for the hearing. The adverse party prior to the day of hearing may serve opposing affidavits. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. A

summary judgment, interlocutory in character, may be rendered on the issue of liability alone although there is genuine issue as to the amount of damages.

(d) Case not fully Adjudicated on the Motion. If on motion under this rule judgment is not rendered upon the whole case or for all the relief asked and a trial is necessary, the court at the hearing of the motion, by examining the pleadings and the evidence before it and by interrogating counsel, shall if practicable ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. It shall thereupon make an order specifying the facts that appear without substantial

controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing such further proceedings in the action as are just. Upon the trial of the action the facts so specified shall be deemed established, and the trial shall be conducted accordingly.

(e) Form of Affidavits; Further Testimony; Defense Required. Supporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein. Sworn or certified copies of all papers or parts thereof referred to in an affidavit shall be attached thereto

or served therewith. The court may permit affidavits to be supplemented or opposed by depositions, answers to interrogatories, or further affidavits. When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon mere allegations or denials of the adverse party's pleading, but the adverse party's response, by affidavits or as otherwise provided this rule, must set forth specific facts showing that there is a genuine issue for trial. If the adverse party does not so respond, summary judgment, if appropriate, shall be entered against the adverse party.

(f) When Affidavits Are Unavailable. Should it appear to the satisfaction of the court at any time

that any of the affidavits presented in bad faith or solely for the purpose of delay, the court shall forthwith order the party employing them to pay to the other party the amount of the reasonable expenses which the filing of the affidavits caused the other party to incur, including reasonable attorney's fees, and any offending party or attorney may be adjudged guilty of contempt

----------*----------

CONCISE STATEMENT OF FACTS MATERIAL TO THE CONSIDERATION OF THE QUESTIONS PRESENTED

On December 20, 1991, the Pro se Petitioner filed a civil suit in the, United States District Court of the District of Columbia Circuit, seeking $125,000,000.00 in relief, for United States Constitutional Allegations, of

being continually "Deprived of Rights" through various wrongful acts committed by respondent with intentional negeligence under the color of the law, violating petitioners Fourth, Fifth, Ninth, Fourteenth Amendment United States Constitutional Rights, and alledged respondent violated United States Constitutional Amendment Thirteen Section One. Pro se Petitioner gave respondent proper and fair notice of the claim. Pro se Petitioner filed his civil suit pursuant to jurisdictional allegations of U.S. Code Title 28 sections 1331 Federal Question, 1332 Diversity of Citizenship and Amount in Controversy, and 1343 Civil Rights and Elective Franchise (app. 154).

On December 20, 1991, Pro se

Petitioner served the summons and complaint upon respondent representatives (app. 145 - 148). The United States District Court Summons properly served, stated to respondent representatives, "To:

Mayor of the District of Columbia,
Mrs. Sharon Pratt Kelly (Dixon)
1350 pennsylvania Avenue, N.W.
Washington, D.C., 20004

"YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon Plaintiff's Attorney

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you fail to do so, judgment by default will be taken

against you for the relief demanded in the complaint (app 148) "

On January 13, 1992, Counsel for respondent instead of filing an answer which was required, filed a Motion to Dismiss the pro se petitioner's complaint, for failure to state a claim upon which relief can be granted, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. This motion was only grounded upon questions of liability and jurisdiction (app. 131).

United States Code Title 28

Rule 12 Federal Rule of Civil Procedure Defenses and Objections- When and How Presented By Pleading or Motion- Motion for Judgment on Pleadings

(a) When Presented. A defendant

shall serve an answer within 20 days after service of the summons and complaint upon that defendant, except when service is made under Rule 4(e) and a different time is prescribed in the order of the court under statute of the United States or in the statute or rule of court of the state. A party served with a pleading stating a cross-claim against that party shall serve an answer thereto within 20 days after the service upon that party. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to the complaint or to a cross-claim,

or a reply to a counterclaim, within 60 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement the responsive pleading shall be served within 10 days after the service of the more definite statement.

On January 24, 1992, the Pro se Petitioner in light of the Court's

Summons and requirement of an answer by United States Code Title 28 Federal Rules of Civil Procedure Rule 12, and 7(a) and 7(c) to be served by the defendant in answer to the complaint (app. 105, 107), pro se petitioner had filed an objection to the respondent's motion and made a motion pursuant to summary judgment Federal Rules of Civil Procedure Rule 56(a) for the Court to move in favor of the appellant. (app. 136-141)

On January 31, 1992, Judge T. Hogan issued an order to both the appellant and the appellee informing the appellant that a memorandum of opposition must be submitted in opposing the appellee's motion to dismiss, and provided notice for possible conversion for summary judgment. The Judge set time

restraints for both parties to submit opposition and response thereto. Purposes of the order stated:

"The Order is to set a briefing schedule by which the parties will abide in order to secure a quick and just adjudication of the plaintiff's claim, and to refer the case to a magistrate judge for resolution of all non dispositive pretrial issues and for report and recommendation of the motion to dismiss and any other dispositive motions."

United States Code Title 28 Federal Rules of Civil Procedure Rule 12(a)(1) "if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action."

On February 4, 1992 Pro se Petitioner filed an application for default and judgement to be entered against the respondent. Pro se Petitioner had not recieved the Judge's order prior to application for default (RE: 91-3265). Respondent did not file an answer to the (app. 105, 107-109, 138) complaint and still has not answered (app. 44) to the complaint or the issues raised by pro se petitioner on appeal (app.12).

On February 10, 1992, the Pro se Petitioner filed a memorandum, both in opposition to the respondent's motion to dismiss and in support of summary judgment in favor of the pro se petitioner (app. 102) an affidavit of the cause of action (app. 95) served with twenty-four affidavited attachments (list, app. 89) setting

forth facts admissible as evidence and proof that support jurisdictional subject matter in support of the pro se petitioner's allegations. All filings were in accordance with the judge's order. The Respondent did not provide oppsition nor an answer to the complaint.

On February 18, 1992 the Respondent submitted a memorandum with a single attachment that was not affidavited and was marked as Exhibit A, and specifically directed to "petitioner's answer to the judge's order." Respondent did not file an answer to the pro se petitioner's complaint or the court, and did not file required opposition to pro se petitioner's motion pursuant to summary judgement (app. 102, 136,) Rule 56(e) of the Federal Rules of

Civil Procedure (p. 27)

On February 25, 1992 the Pro se Petitioner made a Motion for Judgment to be entered in favor of the pro se petitioner, of which pro se petitioner intentionally raised the issue of relief and agreement (app. 70, 73-85). There was no opposition from the respondent.

On March 9, 1992 Pro se Petitioner made application for default to be entered against the respondent The Court did not take any action nor did the respondent oppose default for the relief sought by the pro se petitioner (app. 64).

On March 25, 1992 Pro se Petitioner made a motion for hearing of dispositive motions for report and recommendation. Opposition was not

presented by the respondent.

On May 4, 1992 Pro se Petitioner made a request for a pretrial conference to facilitate settlement of the case. The request was not opposed by the respondent and the United States District Court did not answer to the request.

On June 2, 1992 a hearing referencing dispositive motions (to dismiss; summary judgment) was held before United States Magistrate Judge Alan Kay, the respondent failed to appear (app. 60-61) but respondent's counsel was present. Pro se Petitioner was present and the magistrate judge held the hearing and did so commit to summary judgment procedure but did not render recommendation on the motions.

On September 3, 1992 Pro se Petitioner filed an application for default and judgment to be entered against the respondent (app. 60-63). Unoppsed by respondent.

On September 10, 1992 Magistrate Judge Alan Kay issued a report and recommendation, to grant Respondent's motion to dismiss with prejudice for failure to state a claim, and denied judgment for the pro se petitioner.

On September 23, 1992 Judge T. Hogan issued an order adopting the magistrate Judge's report and recommendation, in a de novo fashion stating a review upon the merits and District of Columbia Law, D.C Code 1601. Misconstruing pro se petitioner's claim of being deprived of United States constitutionally protected rights as a review of

employment actions in light of a non existing District of Columbia Law (RE: 92-7217 attachment to Motion for Stay and Reversal, and RE: 91-3265 Request for Relief from the District Court order Dismissing the complaint). Objection to the Magistrate Judge's report and recommendation.

On November 27, 1992, Pro se Petitioner filed in the U.S. Court of appeals a motion for stay of appeal and reversal of the U.S. District Court order dismissing pro se petitioners complaint.

On December 9, 1992, respondent counsel filed a motion for summary affirmance stating no grounds for summary affirmance (app. 44), soley dependent upon the magistrate judge's report and recommendation and asked

for a dismissal of pro se petitioner's appeal Respondent did not provide an answer or response to the issues (app. 44-46) presented by pro se petitioners motion for stay of appeal or reversal of the U.S. District Courts order (app. 12-43).

On December 15, 1992 Pro se Petitioner filed a response with affidavited evidence to respondent's motion for summary affirmance (app. 47-59), showing prima facia evidence of the respondent's prior knowledge to the actions of the personnel performance review practices, which pro se petitioner alledged was excercised upon him violating his fourth, fifth, ninth, and fourteenth amendment rights afforded him by the Constitution of the United States, and violating the thirteenth

amendment to the Constitution of the United States because of such subjection of the practices upon pro se petitioner by the respondent. Other evidence was also affidavited and attached to the pro se petitioner's response in opposition to the respondent's motion for summary affirmance to dismiss pro se petitioner's appeal (RE: 92-7217, U.S Court of Appeals).

Pro se Petitioner's appeal was not heard and on May 28, 1993, pro se petitioner was denied rehearing in banc because no vote had been taken within ten days. Still, respondent has not answered to the complaint, the allegations of the complaint, nor supported a defense against pro se petitioner's allegations. The time for such answer to be filed by the

respondent to the complaint, allegations, motions, in the U S District Court and the U.S. Court of Appeals, has expired and no addittional time for such answer and or reponses has been granted

Respondent District of Columbia, Municipal Corporation did not answer to pro se petitioner's civil complaint, did not oppose pro se petitioners allegations, and did not properly support a defense in opposition to, the pro se petitioners complaint, allegations, or motions. Respondent was not entitled to dismissal of pro se petitioners claim.

----------*----------

REASON FOR ALLOWANCE OF WRIT OF CERTIORARI

Questions presented for Review

I. DO THE ACTIONS AND RULING OF A MAGISTRATE JUDGE, WHICH DEVIATE FROM THE LAW AND THE TRUE RECORD, FOR FAVOR OR DISFAVOR OF A PARTY, THEN SANCTIONED BY A FEDERAL DISTRICT JUDGE AND FEDERAL APPELLATE JUDGES, OVERRIDE THE CONSTITUTION AND LAWS OF THE UNITED STATES, AND SUPREME COURT UNITED STATES RULINGS?

II. IF THE ANSWER TO THE ABOVE QUESTION IS "NO", THEN IS A UNITED STATES CITIZEN WHO IS NOT A CRIMINAL, ENTITLED TO RELIEF, FOR A PROPERLY BROUGHT AND SUPPORTED CIVIL CLAIM FOR DEPRIVATION OF CONSTITUTIONAL RIGHTS, AGAINST A MUNICIPAL CORPORATION, WHEN

THE CHIEF OFFICERS OF THE CORPORATION DO NOT ANSWER TO THE COMPLAINT, ALLOW ADMITTANCE TO THE ALLEGATIONS, AND DO NOT OPPOSE THE RELIEF SOUGHT?

Motions to dismiss complaint must be deemed to admit allegations of complaint as true. U.S. v. New Wrinkle, 1952, 72 S.Ct. 350, 342 U.S 371, 96 L.Ed. 417

On motion to dismiss or for summary judgement, allegations of plaintiff are to be treated as admitted or as not genuinely in issue Melzer v. Atlantic Research Corp., C A Va 1964, 330 F.d2 946, certiorari denied 85 S.Ct. 78, 80, 379 U.S. 841, 13 L.Ed 2d 47.

"A reported United States decision is the law of the land--" Howlet a minor, by Howlet v. Rose,

1990, ____ U.S. ___, 110 S.Ct. 2430, 2443-2444, an unanimous decision. Enforcement cannot be refused "because of conceptions of impolicy or want of wisdom."

Defendant may forgo motion and assert in answer to complaint every defense, objection, or response defendant has to plaintiff's claim for relief including jurisdictional challenges, denials, affirmitive defenses, and counterclaims. Federal Nat. Morg. ass'n v. Cobb, N.D. Ind. 1990, 738 F.Supp. 1220.

Where defendant failed to comply with rules pertaining to pretrial procedure, ignored an order and failed to respond to plaintiff's motion for summary judgment, judgment was ordered in favor of the plaintiff. Uxmal Corp. Limited v.

Wall Industries, Inc., D.C.Fla 1972, 55F R.D. 219

Absent an answer from the respondent to pro se petitioner's allegations, where the time for such an answer to be filed has expired and has not been extended by the court, allegations of pro se petitioner's complaint are to be treated as admitted, on motion to dismiss or a summary judgment motion.

An "Answer" to the complaint" is essential, to "establish" disputed allegations, presented in a claim for relief, therfore undisputed allegations of the complaint and allegations of jurisdiction, liability, jurisdictional subject matter, are to be treated as true.

An "Answer" to the complaint

places both the pro se petitioner and the respondent on "equal footing at law," on the issues disputed or undisputed, that disputed, parties are to be equally subject to the laws of perjury.

Where pro se petitioner made a motion, raising the issue of the amount of relief, and respondent did not provide a response or opposition to the motion or amount of relief sought, pro se petitioner is entitled to the relief sought (app. 31-34, 70).

A review upon the merits of a claim to which the respondent has not answered is unnecessary, where pro se petitioner alledged jurisdiction and liability, established by statute, (app. 24, 116-128, 137-138, 142-143, 155, 198) and alledged jurisdictional

subject matter and the circumstances upon which pro se petitioner believes he should recover.

Pro se Petitioner, is a Citizen of the United States (app. 124-125) entitled to the equal protection of the laws.

Pro se petitioner seeks the mandate to be vacated, because his civil claim was never disputed by the respondent, and properly presents grounds of jurisdiction (app. 155) and jurisdictional subject matter, a cause of action, liability, and a demand for relief (app. 197-199).

Pro se Petitioner respectfully asks this highest court, to conclude, that respondent stating no grounds for the granting of it's motion for summary affirmance and which being

soley dependent upon a copy of a Judge's Order and a Magistrate Judge's Report and Recommendation, does not substitute for a responsive pleading where a responsive pleading is required to oppose pro se petitioner's motion (app. 12).

Pro se Petitioner filing and serving a complaint upon respondent which seeks relief for intentional negligent deprivation of rights, which stated specific United States Constitutional Rights and the circumstances upon which those rights were alledged to have been violated, gave "fair notice" of the claim. It was the duty of the respondent, upon summons of the Court to serve an answer to the complaint, to the pro se petitioner and the United States District Court (app. 148) and an

answer to the complaint is required pursuant to Federal Rules 12(a) and 12(a)(1) of Civil Procedure (p. 30, p. 31), and therefore respondent was not entitled to a granting of it's motion to dismiss.

Where respondent failed, to answer to pro se petitioner's complaint and failed to oppose pro se petitioner's motions, where such answer and response were required, respondent's summary judgment motion and motion to dismiss, allegations of pro se petitioner, are to be treated as admitted

----------*----------

CONLUSION

The April 7, 1993 United States Court of Appeals order directing ~~issuance of~~ the mandate be vacated,

and judgment entered against the District of Columbia and that the Pro se Petitiner respectfully ask this highest court to order the District of Columbia to pay to the pro se petitioner in this suit that relief demanded in the complaint, one hundred twenty-five million dollars, for compensatory and punitive damages as a deterrent to respondent for intentional negligence in disregard of the pro se petitioner's United States Constitutional Rights, the Constitution of the United States and United States Law, and that attorney's fee's as cost, of up to twenty-five million dollars, also be ordered here, by this highest court for the pro se petitioner.

If this highest court declines, the pro se petitioner respectfully

ask, that the cause be remanded with attorney's fees established by this highest court, ordered for the pro se petitioner here, of up to twenty-five million dollars, with directions to the United States Court of Appeals to vacate the mandate, enter judgment against the respondent, and issue an order for the District of Columbia to immediately pay to the pro se petitioner in this civil case, one hundred twenty five million dollars, to the pro se petitioner in this civil case and the amount of attorney's fees as cost, for failure of respondent to answer to the complaint. That such relief and cost be ordered in the form of thirty year United States Treasury Securities, registered in an account at the United States Treasury, in the name of the pro se petitioner in this

civil case and that the repondent also pay to the pro se petitioner in this civil case, one million dollars in the form of two certified checks, each of five hundred thousand dollars. In a manner that is deliberately right and just.

"I Samuel N. McCoo, Jr., pro se petitioner, am an American Citizen of the United States of America, and do solemly swear and affirm, it is to this republic for which I stand, one nation, under God, indivisible, with liberty and justice, for all, against all enemies, foreign and domestic."

Respectfully submitted,

8/5/93

Samuel N. McCoo, Jr.
Pro se Petitioner

APPENDIX

contents

	Page
Disclosure of appendix	iv
U.S. Court of Appeals orders, denying rehearing and order granting appellee dismissal by summary affirmance	app. v-3
U.S District Court order, denying plaintiff relief from order dismissing complaint	app. 4
U.S. District Court order, dismissing complaint	app. 6
Appellant's certification of service of Motion for Stay and Reversal	app. 10
Appellant's Motion for Stay and Reversal on appeal	app. 12
Appellee's Motion for Summary Affirmance	app. 44
Appellant's response and opposition to Motion for Summary Affirmance on appeal ...	app. 47

Plaintiff's affidavit for
Default and Judgment in
U S District Court ..... app. 60

Plaintiff's affidavit
in support of Motion to
Enter Judgment ..... app. 64

Affidavit, Notice to
defendant of plaintiff's
request to enter judgment
against defendant ..... app. 66

Plaintiff's Motion for
Entering Judgment
in Favor of Plaintiff ..... app. 68

Plaintiff's Memorandum of
Points and Authorities
in support of Entering Judgment
in Favor of Plaintiff ..... app. 73

Plaintiff's Affidavit
list of documents filed ..... app. 86

Plaintiff's Affidavit
list of documents filed with
Affidavit "Cause of Action" .... app. 89

Plaintiff's Affidavit
"Cause of Action" ..... app. 95

(continued next page)

Plaintiff's Memorandum of
Points and Authorities
In Opposition to Motion
to Dismiss and in Support
of Summary Judgment
in Favor of the Plaintiff ..... app. 102

Defendant's
Motion to Dismiss ..... app. 131

Plaintiff's Affidavit of
Mailing Objection and
Motion to Move in Favor of
the Plaintiff ..... app. 134

Plaintiff's Motion to
Move in Favor of Plaintiff .... app. 136

Plaintiff's Objection to
Defendant's Motion to Dismiss... app 141

Plaintiff's Affidavit of
Mailing Summons and
Complaint ..... app. 145

U.S. District Court,
Summonses Issued Requiring
an Answer ..... app. 148

Plaintiff's Complaint ..... app. 154

Disclosure of Appendix

References of documents, affidavits, etc , made in the documents contained specifically in the appendix are to the respective docket as noted by the caption, as follows:

United States Court of Appeals for the District of Columbia Circiut, RE: Civil action 92-7217.

United States District Court for the District of Columbia Circiut, RE: Civil action 91-3265.

The table of contents for this appendix list documents presented on writ of certiorari.

app. v

United States Court of Appeals

for the District of Columbia Circuit

No. 92-7217 September Term, 1992

91cv03265

Samuel N McCoo, Jr.,

Appellant

Filed

MAY 28 1993

v.

RON GARVIN

CLERK

District of Columbia

Before: Mikva, Chief Judge; Wald, Edwards, Ruth B. Ginsburg, Silberman, Buckley, Williams, D. H. Ginsburg, Sentelle, Henderson, and Randolph, Curcuit Judges

O R D E R

Appellant's Suggestion For Rehearing En Banc has been circulated to the full Court. No member of the Court requested the taking of a vote thereon. Upon consideration of the foregoing it is

ORDERED, by the Court en banc, that the suggestion is denied.

Per Curiam

FOR THE COURT:
RON GARVIN, CLRK

BY: Robert Bonner
Deputy Clerk

United States Court of Appeals

for the District of Columbia Circuit

No. 92-7217 September Term, 1992

91cv03265

Samuel N. McCoo, Jr ,

Appellant

Filed

MAY 28 1993

v.

RON GARVIN

CLERK

District of Columbia

Before: Wald, Ruth B. Ginsburg and Sentelle, Circuit Judges

O R D E R

Upon consideration of appellant's petition for rehearing, filed May 10, 1993, it is

ORDERED, by the Court, that the Petition is denied.

Per Curiam

FOR THE COURT:
RON GARVIN, CLRK

BY: Robert Bonner
Deputy Clerk

app ix

United States Court of Appeals

for the District of Columbia Circuit

No. 92-7217 September Term, 1992

91cv03265

Samuel N. McCoo, Jr.,

Appellant

Filed

MAY06 1993

v.

RON GARVIN

CLERK

District of Columbia

Before: Wald, Ruth B. Ginsburg and

Sentelle, Circuit Judges

O R D E R

Upon consideration of appellant's petition for rehearing, filed April 14, 1993, it is

ORDERED, by the Court, that the Petition is denied.

Per Curiam

FOR THE COURT:
RON GARVIN, CLRK

BY: Robert Bonner
Deputy Clerk

United States Court of Appeals

for the District of Columbia

No. 92-7217 September Term, 1992

91cv03265

Samuel N. McCoo, Jr.,

Appellant filed APR07 1993

v. RON GARVIN

CLERK

District of Columbia

Before: Wald, Ruth B. Ginsburg and Sentelle, Circuit Judges

O R D E R

Upon consideration of the motion for summary affirmance, the opposition thereto, the motion for stay and reversal, and the opposition thereto, it is

ORDERED that the motion for summary affirmance be granted. The merits of the parties' positions are so clear as to warrant summary action. See Taxpayers

Watchdog, Inc. v. Stanley, 819 F.2d 294, 297 (D C. Cir. 1987) (per curiam); Walker v. Washington, 627 F.2d 541, 545 (D.C. Cir) (per curiam), cert. denied, 449 U.S. 994 (1980).

Appellees alledged refusal to utilize McCoo's modification, to allow him to install the modification, or to compensate him for it did not violate any constitutional provision or federal statute. Furthermore, McCoo does not dispute that the Comprehensive Merit Personnel Act, D.C. Code Ann. S 1-601 et seq., provided a procedure for challenging his performance rating, the determinations that he had violated personnel regulations, and his non selection for the computer specialist vacancy. None of his complaints about the procedure demonstrate that it afforded him inadequate procedural due

process, and appellee's conduct relating to these employment actions did not violate any other constitutional provision or federal statute. Finally, absent a viable federal claim, the district court properly refused to entertain McCoo's common law claims. It is FURTHER ORDERED that the motion for stay and reversal be denied.

The Clerk is directed to withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing. See D.C. Cir. Rule 15.

Per Curiam

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAMUEL MCCO, JR.,

Plaintiff

v.

DISTRICT OF COLUMBIA, et al.,

Defendants.

Civil Action
No. 91-3265

ORDER

This pro se complaint was filed by the plaintiff, Mr. McCoo on December 20, 1991. On January 13, 1992, the defendants filed a motion to dismiss the complaint. On September 23, 1992, after consideration of the entire record in this case, including the plaintiff's objections to the Magistrate's report and recommendation, the Court adopted the Magistrate Judge's report recommending that the defendant's motion to dismiss be granted and that plaintiff's three motions br denied. The Court determined that the plaintiff

failed to demonstrate that the actions alledgedly taken against him violated any constitutional or statutory provision.

The plaintiff has now filed a motion for relief from the Court's order, alleging that plaintiff's claims were misrepresented, plaintiff was discriminated against, material facts were omitted, and that the dismissal of his claims constituted "manifest injustice." Upon consideration of plaintiff's motion, the Court finds that the plaintiff has failed to demonstrate under Rule 60(b) that relief from the order dismissing his case is necessary or appropriate. Accordingly, it is this _____ day of October, 1992 hereby ORDERED that the plaintiff's motion for relief from the order is DENIED.

Thomas F. Hogan
United States District Judge

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

SAMUEL MCCO, JR.,	)	
Plaintiff	)	Civil Action No. 91-3265
v.	)	
DISTRICT OF COLUMBIA, et al.,	)	
Defendants.	)	

ORDER

This pro se complaint was filed by the plaintiff, Mr. McCoo on December 20, 1991. On January 13, 1992, the defendants filed a motion to dismiss the complaint. Counsel certified that a copy of the motion and supporting memorandum was mailed to the plaintiff on that date. On January 3, 1992 the Court referred the case to Magistrate Judge Kay for report and recommendation on all dispositive motions. Additionally, on that date, the Court warned plaintiff of his obligations

under the Federal Rules of Civil Procedure and the rules of this court, in accordance with the dictates of this Circuit. See Fox v. Strickland, 837 F.2d 507 (D.C. Cir. 1988); Ham v. Smith, 653 F. 2d 628 (D.C. Cir. 1981); Hudson v. Hardy, 412 F.2d 1091 (D.C. Cir. 1968). Subsequently, the plaintiff filed two motions for summary judgment and a motion "to move in favor of plaintiff."

On September 15, 1992 the Magistrate Judge issued a report recommending that the defendant's motion to dismiss be granted and that plaintiff's three motions be denied. Plaintiff filed timely objections to that report and recommendation. After fully considering the Magistrate Judge's report and recommendation and the plaintiff's objections thereto as well as the entire

record in this case in a de novo fashion, the Court shall adopt the report in full and shall dismiss the case. Although the plaintiff failed to meet the threshold pleading criteria of rule 8 of the Federal Rules of Civil Procedure, the Magistrate Judge reviewed the case on it's merits. The Court has done likewise. Plaintiff has failed to demonstrate that the acxtions alledgly taken against him violated any constitutional or statutory provision. As the Magistrate Judge's report and recommendation states, most of the claims plaintiff raises as a District of Columbia employee must be brought in D.C. Superior Court under the Comprehensive Merit Personnel Act, D.C. Code S 1601. None of the factual allegations raised, if accepted as true, rise to the level of a constitutional violation. Accordingly, adopting the

analysis contained in the report and recommendation, it is this 23rd day of September, 1992 hereby

ODERED that the defendant's motion to dismiss is GRANTED; and it is

FURTHER ORDERED that plaintiff's various motions for summary judgment are DENIED; and it is

FURTHER ORDERED that the above-captioned case id DISMISSED.

Thomas F. Hogan
United States District Judge

United States Court of Appealsfor the

District of Columbia

District of Washington

Civil Action No. 92-7217

Samuel N. McCoo, Jr.

Plaintiff

v.

District of Columbia

Defendant

(CERTIFICATION

OF

MAILING

Motion for

Reversal

of Order

I, Samuel N. McCoo, Jr., certify that the Motion for stay and reversal of the U.S. District Court's order dismissing action no. 91-3265, has been mailed by certified mail to the attorney of record, for the purposes of appeal, for appellee District of Columbia, on November 29, 1992, to the Attorney of Record:

D. Gregory Lewis, Assistant Corporation Counsel
Corporation Counsel, District of Columbia
1350 Pennsylvania Avenue, N.W.,
Room #326
Washington, D.C., 20004

for appeal from the order dismissing civil action no. 91-3265 dismissing the appellant's complaint with prejudice and dismissal of the case.

November 29, 1992

Appellant, Pro Se
Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985 (H)

United States Court of Appeals for the

District of Columbia

District of Washington

Civil Action No. 92-7217

Samuel N. McCoo, Jr.

Appellant

v.

District of Columbia

Appellee

Motion for appellant, for stay and reversal, on appeal to the United States Court of Appeals from the United States District Court order dismissing Appellant's complaint with prejudice and dismissal of case 91-3265 in the U.S. District Court.

no oral arument has been scheduled.

United States Court of Appeals for the
District of Columbia
District of Washington
No. 92-7217

Samuel N. McCoo, Jr. Appellant	
v.	Motion for Reversal of Order
District of Columbia Appellee	

Appellant, Samuel N. McCoo, Jr. hereby make a motion to move the U.S. Court of Appeals Pursuant to rule 7 of the local rules to reverse the District Court's order issued on September 23, 1992 granting Appellee's motion to dismiss the complaint with prejudice, for failure to state a claim, and dismissal of the case. This motion is made on the following grounds:

1. Appellant in the civil action

held by the lower court was first entitled to a trial, then entitled to summary judgment and relief, pursuant to United States law, the Federal Rules of Civil Procedure, and the local rules of the District Court, and after proof of appellant's factual allegations of continual deprivation of rights.

2. The order issued by the lower court was based on an abuse of discretion and issued in part on jurisdictional heresay concerning D.C. Law presented by appellee's attorney, and an abuse of discretion concerning a simple and plain statement pursuant to rule 8 of the Federal Rules of Civil procedure.

3. Pursuant to the Federal Rules of

Civil Procedure and the lower Court's local Rules, Appellee affirmatively engaged in action of non verbal admittance to appellant's allegations, conceded to appellant's motions, and disregarded a judges order. The actions show a conceding to appellant's allegations and or disregard for Federal Civil Procedure.

4. The record and Appellant's civil action was misrepresented by the lower court, and the magistrate committed to summary judgment on the action, disregarded that action and disregarded the merits of the case.

5. The order issued by the lower court, adopting the magistrate's report and recommendation,

granting appellee's motion to dismiss with prejudice, and dismissal of the case, is a manifest injustice upon appellant.

6. The order issued by the lower court does not serve the ends of justice or the good of the public.

Appellant filed a motion for relief on September 30, 1992 from the District court order adopting the magistrates report and recommendation (RE: 91-3265). Appellant's complaint of allegations were misrepresented by the lower court, appellant was discriminated against, material facts were omitted by the magistrate, the magistrate assumed assumption of the appellee's defense, and cited in his report and recommendation both erroneous District

of Columbia law unrelated to this action, and those actions and the dismissal of the complaint was and is a manifest injustice by denying appellant equal rights after appellant had supported and proven appellant's allegations entitling appellant to relief. Appellant's motion for relief from the order was denied by Judge Thomas Hogan on October 7, 1992, and again cited rule 8 of the Federal rules of Civil Procedure and District of Columbia law referencing the civil action (attached, attached to request for relief, see D.C. law 1-601.1). Then on October 19, 1992 appellant filed "Notice of Appeal".

The appellant sought relief in the complaint of $125,000,000.00 dollars, because :

1. The appellant designed a

modification which was taken and used by the appellee, which would provide the appellee $1,200,000.00 dollars annually through savings, that is $24,000,000.00 for a twenty year period. The appellee intentionally neglected to compensate appellant seizing the modification through arbitrary and intentional negligent acts to fraudulently take from appellant, under color of law. Violating appellant's 4th, 5th, 9th, and 14th, amendment rights to the constitution. Appellant alleged multiple circumstances concerning the acts effecting the wrong doing and appellant provided proof (see complaint paragraphs: 4, 5, 6, 10, 11, 13, 14, 18, 22, 35).

2. The appellant was subjected to a

personnel evaluation system which was not based on any standards, misrepresenting appellant's professional performance and behavior, and a review process which was used to violate and deprive appellant's 4th, 5th, 9th, and 14th, amendment rights to the constitution and obstructed justice. Appellant made allegations of multiple circumstances where appellant's rights were violated and the appellee arbitrarily and intentionally neglected the processes and committed acts in disregard of appellant's rights, under color of law, to the extent to effect involuntary servitude upon appellant (attached see complaint, paragraphs: 7, 8, 24, 25, 26, 27, 28, 29, 30). Appellant provided proof of those allegations.

3. Appellant made allegations that appellee stated that appellant was not qualified for a computer specialist position, of which it had advertised, misrepresenting appellant. Appellant provided proof of qualifications and then asked what standards appellee was using to determine appellant's qualifications. The appellee did not provide the standards, but stated that appellant must file a grievance. Upon appellant's filing of grievance and proof of qualifications, appellee closed the position and denied redress. Appellee committed arbitrary intentional negligence, under color of law, depriving appellant of redress, equal opportunity, and benefits of labor. The acts violated appellant's 1st, 9th, and 14th,

amendment rights to the constitution (attached see complaint paragraphs: 31, 32). Appellant provided proof of allegations. Further appellant set out damages and subject matter for those damages, made demand for relief against the District of Columbia, and demand for trial by jury (atached see complaint paragraphs 35, 36, pages 21 and 22). The acts complained deprive appellant of freedom, life, liberty, and property, in violation of amendment 4, 5, 9, of the constitution of the United States. The result of the total actions taken against appellant by appellee violate constitutional amendment 13.

Appellee moved for dismissal of the complaint with prejudice, based on grounds of jurisdiction and liability

(attached).

Appellant provided objection and motion to move in favor of appellant (attached).

The lower court provided a briefing schedule and notice for possible conversion, and directions to appellant to provide opposition to appellee's motion, and for appellee to provide response thereto. The lower court referred the non dispositive action for resolution and dispositive motions for report and recommendation, to a magistrate (attached).

Appellant provided opposition to appellee's motion to dismiss, and appellant provided support for appellant's motion to move in favor of appellant, pursuant to summary judgment (attached, see receipt affidavit of documents (filed February 10, 1992).

Appellee filed a response to appellant's answer to order, with one exhibit which was not affidavitted. Appellee did not oppose appellant's motion for the court to move in favor of appellant on the case.

Appellant then filed a motion for judgment in favor of appellant. Appellee did not oppose the appellant's motion.

Appellant then filed a motion for hearing of facts and recommendation of dispositive motions. Appellee did not oppose the motion.

An oral hearing was held on June 2, 1992, for dispositive motions (to dismiss; summary judgment), appellee failed to appear, and the magistrate committed to summary judgment. At the hearing appellee's attorney was present and raised by heresay the erroneous

District of Columbia law.

The lower court exercised an abuse of discretion concerning the civil action because appellant made jurisdictional allegations pursuant to Title 28 sections 1331 and 1343, provides original jurisdiction for civil suits for deprivation of rights. referring to Title 42 1983, 1985, and, 1986, and generally inferred deprivation of Title 42 sections 1981 and 1982. Title 42 section 1988, (Vindication of civil rights; attorney's fees) mandates that the District Court exercise jurisdiction in the enforcement of persons deprived of rights in violation of Title 42 sections 1981, 1982, 1983, 1985, and 1986.

The lower court exercised an abuse of discretion concerning rule 8 referring to notice pleading and a plain and

simple statement. Appellant met the requirements of rule 8 by providing "fair notice" and a plain and simple statement of allegations of circumstances occurring over approximately a four year period, upon which appellant is still suffering from damages.

Litigant is only required to construct complaint which truly and accurately reflects basis on which he believes he should recover and one which gives fair notice to party against whom relief is sought. Reed v. Board of Ed. of Parkway School Dist., C.A.Mo. 1972, 460 F.2d 824.

What is a plain and simple statement of a claim within this rule requiring the same depends upon the circumstances of the case. Atwood v. Humble Oil & Refining Co., C.A.Tex.1957, 243 F.2d 885

The lower court exercised an abuse of discretion concerning appellee's liability because the United States laws previously mentioned herein authorize recovery of damages for deprivation of rights, and a municipal corporation is liable.

"On the one hand, the municipality acts in a quasi-private capacity for the private advantage of inhabitants of the city and for the city itself in the exercise of a ministerial or proprietary function, and in such case, under doctrine of respondeat superior, a municipal corporation is liable for the tortious acts or omissions of its officers, agents, and employees. Ravettino v. City of San Diego, 160 P.sd 52, 70 Cal. app.2d 37.

"When a municipality extends its activities to a proprietary or corporate

function, it places itself in the same position as a private individual or corporation, and is civilly responsible for the negligence of its agents while engaged in the performance of proprietary or corporate duties. Spaur v. City of Pawhuska, 43 pd2.d 408, 409, 172 Okl. 285.

None of the acts alleged by appellant in the complaint serve the public, so there is no governmental immunity, because the acts are of a proprietary and ministerial nature and purpose. Appellee is liable.

Appellant alleged throughout the complaint intentional negligence, depriving appellant of rights.

* To state a cause of action for negligence, it is sufficient against a motion to dismiss, to allege that

defendant acted negligently and that as a result plaintiff was injured. Augusta Broadcasting Co. v. U.S., C.A.GA., 170F.2d 199.

Appellant defeated appellee's motion to dismiss, entitling appellant to a trial.

In motion to dismiss, court looks to four corners of complaint and is required to accept plaintiff's allegations as true and construe those allegations in light most favorable to plaintiff; complaint will only be dismissed if plaintiff can prove no set of facts that would entitle him to relief. Schmid, Inc. v. Zucker's Gifts, Inc., S.D.N.Y.1991, 776 F.Supp. 118

The lower court exercised an abuse of discretion, by ignoring the admissions developed in the record by appellee, appellee not opposing the appellant's

motion to move in favor of appellant, pursuant to Rule 56(a) FRCP and motion for judgment, and ignoring appellee's failure to abide by the scheduling order and appellee's failure to appear for hearing. The actions provide appellee in disregard of the rules. The rules provide appellee conceding to the motions. Appellee is required to oppose motions by response/opposition.

Pursuant to rule 56 FRCP appellee is required to provide affidavitted facts admissible as evidence in addition to a response/opposition. The appellee did not provide a defense. Appellant had provided proof of his allegations, though on a motion pursuant to Rule 56, a judgment may be rendered on liability alone.

The lower court exercised an abuse of discretion in denying appellant relief,

because appellant was clearly, entitled to relief as a matter of law, based on the record, proof, and the law.

Where defendant failed to comply with rules pertaining to pretrial procedure, ignored an order and failed to respond to plaintiff's motion for summary judgment, judgment was ordered in favor of plaintiff. Uxmal Corp. v. Wall Industries, Inc., D.C.Fla.1972, 55F.R.D. 219.

Clearly the lower court exercised an abuse of discretion and the D.C. law it cited is attached to show it's irrelevance to this action.

Motion to dismiss complaint must be deemed to admit allegations of complaint as true. U.S. v. New Wrinkle, Ohio 1952, 72 S. Ct. 350, 342 U.S. 371, 96 L. Ed. 417; Andujar v. Weinberger, D.C.N.Y.

1976, 69 F.R.D. 690.

A record of admissions had developed, entitling appellant to summary judgment and appellant was entitled to judgment and relief as a matter of law.

The lower court should have granted appellant the relief entitled.

> Punitive damages are awarded, in addition to compensatory damages, both to punish wrongdoer and deter him and others from similar misconduct in the future. -- Subscription Television of Greater Washington v. Kaufman, D.C.D.C. 1985, 606 F.Supp. 1540.

4. The following monetary relief has been assessed by appellant and presents these damages for consideration of relief:

Compensatory damages

(1) Mental pain and suffering, caused by appellee's intentional negligent disregard for appellants security and safety for four years, leaving appellant no protections $5,000,000.00.

(2) Appellee's intentional negligent wrongful fraudulent taking and use of design modification $50,000,000.00 in violation of amendment 5, under color of law. Appellee should not be allowed to benefit from the modification for a period of twenty years. D.C. Law 22-3822 provides 3 times the value obtained by fraud.

(3) Appellee's intentional negligent acts depriving appellant of security of person, property, and

effects, allowing abuse of processes and practices, seizing the same, under color of law, $5,000,000.00 in violation of amendment 4 and Title 42 sections 1983, and 1986.

(4) Appellee's depriving appellant of freedom by ultimately restricting his economic and professional foundation through fraudulent misrepresentation and character assassination, forcing involuntary servitude upon appellant, depriving appellant of life, liberty, and property, under color of law, without just cause or due process, and failing to prevent the same. $10,000,000.00 in violation of 5th amendment, Title 42 sections 1983, 1986.

(5) Appellee's intentional negligent

deprivation of benefits of labor and life, by use of practices and processes under color of law. $5,000,000.00 in violation of 9th amendment and Title 42 sections 1982, 1983, 1985, 1986.

Punitive damages

(6) Punitive damages for arbitrary, successive intentional negligence depriving appellant of 4th, 5th, 9th, and 14th amendments to the constitution, under color of law, committing arbitrary intentional negligent deprivation of rights, with reckless and malicious disregard of appellant's rights, for a period of four years. $50,000,000.00

Conclusion

Appellant proved his allegations and

appellee provided no opposition. Appellant was entitled to relief. Where appellee did not support it's defense and made no effort to oppose appellant's motions, and appellee did not appear for hearing, nor abide by the judge's order, the lower court had no right to assume defense, in effect, for appellee. The lower court should have taken into consideration of the circumstances of appellant under appellee, and caused settlement, granting appellant relief and to cause deterrent to appellee's practices and processes to protect others.

Appellant is a Pro Se litigant who sought fair relief pursuant to the law. Appellant never expected the total monetary relief nor did appellant expect the actions by appellee which are regarded by the Local rules and Federal

Rules as admissions and actions that can be treated as conceding, and if appellee's actions are not treated as conceding with the admissions, then appellee's actions clearly show a disregard of the Federal and Local Rules of the court.

(i) The likelihood of appellant prevailing on the merits, if treated fairly, is likely.

(ii) Appellant already has suffered irreparable injury, however, if relief is withheld, the safety and security of appellant will diminish, and appellant shall be condemned to involuntary servitude until disposed of by appellee, without just cause, permanently denying appellant and appellant's family of freedom, life, and liberty, and permanently deny appellant and appellant's family, of the security and

protection of the United States Constitution. Appellant works in a hazardous environment induced by appellee which has and continues to threaten the safety of appellant.

(iii) To appellant's knowledge no harm would come to other parties if relief is granted, appellee is a municipal corporation and would benifit through the expansion of it's tax base and stimulation to it's economy.

(iv) To grant appellant relief is in the publics best interest, because the lower court's ruling communicates to Black Americans and other minorities, that the Federal Courts approve of violating the rights of Black Americans and other minorities and of involuntary servitude and the resurrection thereof (modern slavery) as long as it is done under the guise of a municipal

corporation. The ruling is contradictory to the merits of the case and the U.S. Constitution, because it is constituted that no person shall be deprived of life, liberty, or property without just cause or due process, nor deny to any person within it's jurisdiction the equal protection of the laws. All persons in the metropolitan area are effected, and to deny appellant relief raises endangerment to the public, because the appellee is a municipal corporation made up of a majority of Black Americans and other minorities, itself from within and from surrounding jurisdictions, who will be effected by the lower courts ruling, causing those people and others to assume a defensive posture. This defensive posture assumed over a period of time will result in the denial of protection of all citizens. History, has shown this. A person who

knows freedom, cannot, having committed no wrong adapt to undue restriction, especially persons bred in the United States of America.

If relief is granted appellant, The public at large and the local public will benefit through the expansion of the Federal and Local government's tax bases (redistribution of taxable dollars), the relief will stimulate the local and national jurisdictional economies, and appellee and the Federal Government will recover cost through the normal levying of taxes. More over mediation will provide a forum upon which communication can be had to raise discussion pertinent to the remaining relief due appellant and discuss solutions for correcting the practices and processes complained. Ultimately, the granting of relief to appellant

is ultimately a granting of relief to the public.

Relief sought

The relief herein sought by Samuel N. McCoo, Jr. should be granted to protect his person and secure him and his rights. Samuel N. McCoo, Jr. seeks the following legal form of relief, from the U.S. Court of Appeals:

1. Order a Stay on the action of appeal.

2. Order the District Court's order be overturned in favor of the appellant, Samuel N. McCoo, Jr.

3. Order mediation between Samuel N. McCoo, Jr. and the District of Columbia.

4. Order the District of Columbia, to pay in advance of mediation or within forty-five days, whichever time is

shorter, towards compensatory and punitive damages, as partial award; for mental pain and suffering, and arbitrary intentional negligent deprivation of rights, with reckless and malicious disregard of rights; to Samuel N. McCoo, Jr., fifteen million dollars, in five million dollar three month United States Treasury Securities, to be delivered to him by registered mail and designated to the same account as his direct deposit payroll account.

5. To order the remaining balance of relief for damages demanded in the complaint for mediation between Samuel N. McCoo, Jr. and the District of Columbia to be settled within a period of six months between the parties, with the stipulation that if no settlement for the remainder of

relief or other agreement is reached settling the disposition of the case between the parties, then the mediator shall notify the U.S. Court of Appeals within fifteen days thereafter for scheduling of hearing, and the U.S. Court of Appeals shall determine and award a remaining balance of monetary relief for compensatory and punitive damages, to be awarded to Samuel N. McCoo, Jr. and enter judgment against the District of Columbia, closing the case.

Appellant, welcomes mediation and an affirmative response from the appellee. Appellant has been suffering for over four years. Appellant seeks to neutralize the adversarial relationship with the District of Columbia, so that some constructive agreement can be made

to protect others rights and the public.

Respectfully,

November 27, 1992

Appellant, Pro Se
Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985 (H)
(202) 767-7496 (W)

UNITED STATES COURT OF APPEALS

For the District of Columbia Circuit

Samuel N. McCoo, Jr., Appellant	No. 92-7217
v.	
District of Columbia, et. al., Appellees.	

MOTION OF APPELLEES FOR

SUMMARY AFFIRMANCE

The District of Columbia, Mayor Sharon Pratt Kelly, and the Office of Employee Appeals, the appellees here, persuant to Rule 7(i) of the General Rules of this Court, move for summary affirmance of the September 23, 1992, order of the district court granting the defendants' motion to dismiss the pro se complaint brought by Mr. McCoo which requested one hundred and twenty-five

million dollars in damages for negligence, conspiracy, assault, fraud, defamation, obstruction of justice, misrepresentation, conflict of interest, deprivation of statutory and constitutional rights. In support of the motion, the appellees adopt and incorporate by reference the September 23, 1992, Order (Hogan, J.) issued by the district court in this case and United States Magistrate Judge Kay's Report and Recommendation filed in the district on September 10, 1992.

Respectfully submitted,

JOHN PAYTON
Corporation Counsel, D.C.

CHARLES L. REISCHEL
Deputy Corporation Counsel, D.C.
Appellate Division

ROSALYN CALBERT GROCE
Assistant Corporation Counsel, D.C.

Attorneys for the District of Columbia
District Building, Room 305
app.

1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Telephone No.: 727-6252

CERTIFICATE OF SERVICE

I hereby certify that a copy of the forgoing document was mailed, postage prepaid, to Samuel McCoo, pro se, 3917 7th Street, N.W., Washington, D.C. 20011, this 9th day of December 1992.

ROSALYN CALBERT GROCE
Assistant Corporation Counsel, D.C.

United States Court of Appeals for the
District of Columbia
District of Washington
Civil Action No. 92-7217

Samuel N. McCoo, Jr. Appellant v. District of Columbia Appellee	Appellant's response and opposition to appellee's response and motion for summary affirmance

Appellee District of Columbia presented a single statement in opposition to appellant's motion for summary reversal, stating that appellee District of Columbia opposed appellant's "Motion for reversal of order" and that appellee will incorporate by reference it's response presented in it's motion

for summary affirmance, dated December 9, 1992. Appellant made no motion for summary reversal.

Appellee's motion dated December 9, 1992, pursuant to rule 7(i) for summary affirmance stating that in support of the motion appellees adopt and incorporate by reference the September 23, 1992, order issued by the district court in this case and the U.S. Magistrate Judge Kay's Report and Recommendation filed September 10, 1992. Appellee District of Columbia did not present and did not state any grounds for the motion or for summary affirmance. Appellee District of Columbia did not make references.

The lower court abused it's discretion in the civil action action, because the complaint clearly stated a claim upon which relief can be granted

(see: Appellant's "Motion for reversal" pages 4, 5, and 6, referenced to complaint).

The following facts are presented as evidence and show that the lower court abused it's discretion by omitting controlling material facts that entitled appellant Samuel N. McCoo, Jr. to relief.

1. The magistrate on June 2, 1992 recognized appellant Samuel N. McCoo, Jr. as requesting an oral hearing of dispositive motions (attached, see: transcript of hearing page 2 lines 17 to 23, also see: call to hearing from court attached to appellant's motion for reversal).

2. Appellee District of Columbia failed to appear for the hearing, after questioning appellant Samuel N. McCoo,

Jr., the magistrate Judge questioned the attorney for appellee District of Columbia (attached, see: transcript of hearing page one lines 12 to 15, and pages 25 line 24 to page 26 line 2).

3. Appellant stated jurisdictional allegations pursuant to U.S.C. Title 28 section 1343 (Civil rights; elective franchise) and U.S.C. Title 42 section 1988 (vindication of civil rights; attorney's fees) (attached, see: transcript of hearing pages 3 line 15 to page 4 line 2). The magistrate in his report misrepresented appellant's jurisdictional allegations as citing U.S.C. Title 42 section 1983 (see: page 6 of magistrate judge's report and recommendation, attached to appellant's motion for reversal).

4. The magistrate committed to summary judgment procedure by including outside

matters. The magistrate stated his recall of a letter he read, that was presented in the record by appellant Samuel N. McCoo, Jr. (attached, see: transcript page 8 lines 3 to 15, also see: page 28 lines 15 to 25).

5. Appellant verbally stated a claim setting forth jurisdictional subject matter pursuant to the Fifth amendment, taking of appellant's property by the District of Columbia Government for public use without just compensation (attached, see: transcript of hearing page 9 line 19 to page 10 line 9). The hearing was interlocutory in character.

6. Liability was not in question as to party as stated by the magistrate Judge's report pages 7 to 8 (attached, see: transcript of hearing page 2 lines 3 to 4, also see page 2 line 25 to page 3 line 1, also see: summons and

complaint page 21 of 21 demand for relief attached to appellant's motion for reversal).

7. The following are some of the evidences presented with memorandum (memorandum attached to appellant's motion for reversal) that had been presented to the lower court as affidavited attachments both in opposition to appellee's motion to dismiss and in support of appellant's motion pursuant to summary judgment by appellant Samuel N. McCoo, Jr., filed February 10, 1992 (see: receipt attached to appellant's motion for reversal), proving factual allegations of the complaint and are attached hereto:

(a) attachment 24 -- is from a District of Columbia Register, pages 5749 to 5753, the pages are dated September 12, 1986. The statements

presented therein show evidence of appellee having prior knowledge of the personnel evaluation process conducted without standards under color of law, which would allow abuse against persons. Pages 5749, 5752, and 5753 evidence appellee's prior knowledge and intentional neglect to prevent oppressive acts depriving appellant of rights, as referenced to this civil action (see: Appellant's motion for reversal page 4 paragraph 2 to page 5 and pages 13 to 15).

(b) attachments 22 and 23 -- personnel performance evaluations of which appellant was subjected without there being any standards. These documents one dated in 5/24/89 and the other dated in 6/1/90 show premeditation of intentional neglect in disregard of appellants rights to cause appellant damages by

fraudulent misrepresentation under color of the law committing conspiracy to deprive appellant of rights and neglect to prevent deprivation of rights (see: Appellant's motion for reversal page 4 paragraph 2 to page 5 and pages 13 to 15).

(c) attachment 4 -- is a document rendered by the office of employee appeals by appellee District of Columbia. Although this document can be proven by appellant as misrepresentative at points, the point herein is directed to admittance and malicious intentional negligence depriving appellant of rights. Page 2 shows admittance to the abuse of the personnel performance process and review process lasting two years, and states that the appellant was subjected to the personnel process without standards for the period

of 1988 to 1989, and also states that award of damages is exclusive to the courts.

8. The individual attachments presented herein attached, show and prove as referenced to this civil action, malicious intentional negligence committed to cause appellant damages, depriving appellant of his 4th amendment right to be secure in his person, without regard to appellant's rights. The evidence collectively show and prove intentional negligence causing seizure of appellant, depriving appellant of his 5th amendment right, depriving appellant of life and liberty, without just cause or due process, under the color of the law.

9. The acts set out above referencing the attachments, show and prove acts by appellee, clearly set out in statute

of which a reasonable person would have known to be a violation of the law, conspiracy, fraud, misrepresentation, assault, obstruction of justice, deprivation of rights.

10. The evidence set herein have been presented herein to prove why the appellee District of Columbia's motion for summary affirmance should not be granted and is by no means intended by appellant Samuel N. McCoo, Jr. to relinquish any claim, allegation, or evidence, and appellant can provide further evidence.

11. The magistrate judge abused his discretion in omitting the above mentioned facts referenced to the transcripts and evidence set out herein and the lower court did not conduct an adjudication of the merits as it stated.

12. Summary judgment is controlling and Rule 56(e) states, the adverse party (District of Columbia) may not rest upon the pleadings alone.

13. The lower court abused it' discretion in rendering a ruling for the District of Columbia because rule 56(e) requires the District of Columbia to set forth affidavitted facts made on personal knowledge that set forth facts admissible as evidence. The appellee District of Columbia presented no affidavitted evidence. Appellee's attorney O. Gregory Lewis is not the adverse party and therefore cannot take the place of appellee at a hearing requiring the adverse party to be present, and since appellee is a municipal corporation, appellee's attorney must first obtain and then present to the record "power of

attorney" authorizing appellee's attorney to make evidentiary factual commitments binding by certification from him, before a hearing/proceeding. Appellee's attorney did not present power of attorney, prior to or at the hearing, nor evidence by affidavit, rendering his opinions of the appellee District of Columbia's position in the matter as irrelevant heresay.

14. The lower court exercised an abuse of discretion and denied appellant equal rights, by omitting appellee District of Columbia's failure to appear and defend in the civil action.

Conclusion

Appellee District of Columbia, has not presented or stated grounds for it's motion for summary affirmance and therefore appellee's motion for summary

affirmance should be denied, and appellant Samuel N. McCoo, Jr.'s motion for reversal of order, requesting stay of appeal and over turning of the District Court's ruling, should be granted to secure and protect appellant Samuel N. McCoo, Jr.'s person and constitutional rights. Samuel N. McCoo, Jr. is a United States Citizen who has been suffering from the damages of appellee District of Columbia's actions, now, for over four years.

Respectfully submitted,

December 15, 1992

Appellant Pro Se

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985 (H)
(202) 767-7496 (W)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Samuel N McCoo, Jr.
Plaintiff.

vs.

District of Columbia Government
Defendant.

Civil Action No. 91-3265

HOGAN, J. (TFH)

A. Kay, Magistrate

AFFIDAVIT IN SUPPORT OF

DEFAULT AND JUDGMENT

I hereby certify under penalty of perjury, this 23 day of September, 1992, that I am the Plaintiff in the above-entitled case; that the defendant was: served via certified mail pursuant to the provisions of Rule 4(C)(ii) of the Superior Court of the District of

Columbia on December 24, 1992

and that the attorney of record in this action is:

D. Gregory Lewis, Assistant Corporation Counsel, Bar Id # 266049
Corporation Counsel of the District of Columbia
1350 Pennsylvania Avenue, N.W.,
Room #326
Washington D.C., 20004

I further certify under penalty of perjury that said defendant in this case although appearing in the action failed to answer to the complaint; that no answer to the complaint has been filed and none served upon the plaintiff; no extension of time has been given to file such an answer and the time for filing has expired; that the <u>defendant did not appear for hearing of dispositive motions</u>:

(1.) defendants' motion to dismiss.

(2.) plaintiffs' motion for summary judgment.

that the defendant is neither an infant or an incompetent person; and there is now justly due and owing to the plaintiff by the defendant the sum of: One Hundred Twenty-Five Million dollars ($125,000,000.00) with interest and costs.

The Court is requested to enter a Judgment by Default against said defendant.

September 3, 1992

Plaintiff
Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985, 882-0109 (H)
(202) 767-7496 (W)

I certify that a copy of this default request, requested to be entered against the defendant District of Columbia, was sent to give "Notice of Default" to the defendant by

certified mail on September 3, 1992

sent to the attorney of record for the

defendant, to the following address:

O. Gregory Lewis, Assistant Corporation
Counsel, Bar Id. # 266049
Corporation Counsel of the District of
Columbia
1350 Pennsylvania Avenue, N.W.,
Room #326
Washington D.C., 20004

September 3, 1992

Plaintiff
Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985, 882-0109 (H)
(202) 767-7496 (W)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr
Plaintiff

vs.

District of Columbia Government
Defendant

Civil Action No. 91-3265

HOGAN, J. (TFH)

AFFIDAVIT IN SUPPORT OF
MOTION TO ENTER JUDGMENT

I hereby certify under penalty of perjury, this 9 day of March 19 92, that I am the Plaintiff in the above-entitled case; that the defendants' representative of record:

O. Gregory Lewis, Assistant Corporation Counsel
Bar Id. # 266049
Corporation Counsel of the District of Columbia
1350 Pennsylvania Avenue, N.W.,
Room #206
Washington D.C., 20004

was served a copy of the motion and memorandum in support of the motion to enter judgment for the plaintiff, via certified mail pursuant to the provisions of Rule 4(C)(ii) of the Superior Court of the District of Columbia on February 26, 1992.

That the above mentioned papers were deposited in the United States Mail on February 24, 1992, and I have received the receipt for the certified mail: No. P 982 021 422 (attached hereto); indicating that delivery was made upon said defendants' Attorney of record on the TWENTY-SIX day of FEBRUARY, 1992.

March 9, 1992

Plaintiff
Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985, 882-0109 (H)
(202) 767-7496 (W)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr.

Plaintiff

vs.

District of Columbia Government
Mayor of the District of Columbia,
Mrs. Sharon Pratt Kelly (Dixon)
Council of the District of Columbia,
Mr. John A. Wilson, Chairman
Office of Employee Appeals,
Mr. Warren Cruise, Executive Director

Defendant(s)

Civil Action No. 91-3265

HOGAN, J. (TFH)

AFFIDAVIT FOR NOTICE TO DEFENDANT(S)

OF PLAINTIFFS' REQUEST TO ENTER JUDGMENT

I the plaintiff, Samuel N. McCoo, Jr. certify that the following, documents were mailed February 24, 1992:

1. MOTION TO ENTER JUDGMENT IN FAVOR OF THE PLAINTIFF.

2. MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THE MOTION.

3. A COPY OF THIS AFFIDAVIT.

by certified mail to the Defendant(s) Representative of record:

D. Gregory Lewis, Assistant Corporation Counsel
Corporation Counsel,
District of Columbia
1350 Pennsylvania Avenue, N.W.,
Room #206
Washington, D.C., 20004

to notify the defendant(s) of the motion made to enter judgment for the plaintiff.

February 24, 1992

Signature

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr.

Plaintiff

vs.

District of Columbia Government
Mayor of the District of Columbia,
Mrs. Sharon Pratt Kelly (Dixon)
Council of the District of Columbia,
Mr. John A. Wilson, Chairman
Office of Employee Appeals,
Mr. Warren Cruise, Executive Director

Defendant(s)

Civil Action No. 91-3265

HOGAN, J. (TFH)

MOTION: FOR ENTERING OF JUDGMENT IN FAVOR OF THE PLAINTIFF

I the Plaintiff, Samuel N. McCoo, Jr. make a motion to the Court to move, pursuant to Rule 54(c)(d) and

55(b)(2), of the Federal Rules of Civil Procedure, in favor of the Plaintiff on the following grounds:

1. I the Plaintiff, Samuel N McCoo, Jr. am entitled to a judgment by law.

2. The heightened pleading standard was addressed and does not apply to this action.

3. The single alleged exhibit submitted by the defendant(s) does not evidence anything except to intimidate the plaintiff, by reason of authoritive position after and during the facts.

4. I the plaintiff Samuel N. McCoo, Jr. Am entitled to a judgment in my favor by default.

5. There is no reason why, I the

plaintiff should have to
continue to suffer hardship.

On the grounds so stated, Judgment, should be Entered, FOR THE PLAINTIFF, and against the District of Columbia Government, the Relief Demanded in the Complaint and attorney's fees equal to one-fifth of the relief demanded, should be ordered, of which the total of relief and cost to be restituted by the District of Columbia Government would be One hundred Fifty Million Dollars ($150,000,000.00), which would be due and owing to I the plaintiff, Samuel N. McCoo, Jr., to be surrendered soon thereafter by the defendant(s) DISTRICT OF COLUMBIA GOVERNMENT, in the form of a certified check or cashiers' check, that the relief and cost be undisclosed to the public only after the redeeming of value

of the instrument. This would constitute a completed action and an effort to protect the privacy and rights of I the plaintiff Samuel N. McCoo, Jr., unless otherwise ordered disclosed by a Federal Court. The completed actions would constitute vindication of I the plaintiff Samuel N. McCoo, Jr., would provide an acceptable settlement at this time and immediate opportunity for I the plaintiff Samuel N. McCoo, Jr. to begin to recover from the damages, injury, and the lasting effect of such turmoil burdened me, and would humbly end this action if there were no appeal by the defendant(s). Allowing opportunity for the defendant(s) to be relieved from this action, to take corrective measures to insure that this situation and others do not occur and/or continue and to provide maximum integrity in the enforcement to prevent such deprivations

from occurring to its' citizenry and other U S citizens and/or persons in its' domain and/or jurisdiction.

Respectfully submitted,

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985, 882-0109 (H)
(202) 767-7496 (W)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr.

Plaintiff

vs.

District of Columbia Government
Mayor of the District of Columbia,
Mrs. Sharon Pratt Kelly (Dixon)
Council of the District of Columbia,
Mr. John A. Wilson, Chairman
Office of Employee Appeals,
Mr. Warren Cruise, Executive Director

Defendant(s)

Civil Action No. 91-3265

HOGAN, J. (TFH)

MEMORANDUM of Points and Authorities

IN SUPPORT OF THE ENTERING OF

JUDGMENT IN FAVOR OF THE PLAINTIFF

Preliminary Statement

The defendant(s) actions legally admit and concede to the complaint and the relief demanded, cost associated with such action, and have also

defaulted by failing to answer to the complaint The Caption of the action accurately displays the sub bodies of the District of Columbia Government whom are concerned with this action and those parties who answer for those bodies to or for the District of Columbia Government. The Complaint is against the District of Columbia Government. The caption was written in this manner to insure both competency and liability (refer to the complaint page two of twenty-one, paragraph 3) and damages were directed as such against the District of Columbia Government (refer to the Demand for Relief page twenty-one of twenty-one and Affidavit of mailing of the Summons and Complaint) which removes the doubt of which this suit is directed and clarifies to whom judgment is sought against. Thereby giving the Court direction in the preparation of

the "Judgment Document" when such judgment is rendered in favor of the plaintiff, since no judgment document is to be designed by a party other than the court, unless expressly directed by the court to do so. The caption is the only reasonably comprehensible action of which the defendant(s) could be pursuing the defense, "Heightened Pleading Standard". Since the defendant(s)' representative is competent and has read the complaint, it would be absurd to consider the action of the defendant(s) to be anything other than an admission to the whole matter and an agreement to the relief. Which in it's simplest terms is an effort to make restitution.

ARGUMENT

THE DEFENDANT(S) HAVE NO LEGAL SUPPORT TO PREVAIL IN THIS ACTION

I the plaintiff, Samuel N. McCoo, Jr. received the defendant(s) response on February 21, 1992, in reference to the Courts Orders filed February 3, 1992, I the plaintiff, Samuel N. McCoo, Jr. have complied in full to said order and filed opposition to the Defendant(s) motion to dismiss of which also a list of said opposition was included for filing, on February 10,1992. The defendant(s) response to the compilations of the Answer to Order, again only criticizes, speculates, and questions the legality of the filings as has been done concerning the complaint. Since such action was clearly stated word for word in my the plaintiffs' Samuel N. McCoo, Jr. memorandum of points and authorities, concerning demurrers (refer to page 3, paragraphs II and III), the effect of failure to deny (refer to pages 3 to 4, paragraph

V), complaint and answer (refer to page 2, paragraph I) default (refer to pages 4 to 5, paragraphs VI and VII). I the plaintiff Samuel N. McCoo, Jr., did in fact address the heightened pleading standard (refer to the Memorandum in Opposition to the defendants Motion to Dismiss, pages 11 to 12, paragraph XVII), (refer to the complaint page 21 of 21, Demand for Relief) of which the defendant(s) are concerned, and although government officials may use this defense when prosecution is brought against the individual, it does not warrant use with this action, in that this action, is against the District of Columbia Government, therefore, such immunity alleged is not practicable in this action because the defendant(s) is not a government official but a government body made up of many individuals with the greater part being

non government officials. Therefore the defendant(s) has no argument because, to do so with the belief that this action is subject to such a condition, would in fact place the individuals speculated to be subject to this civil suit listed at odds against the law, and each individual would be in default as individuals, and further could be charged with impropriety, misuse of government, conflict of interest, etc., because these individuals should not be using for personal services, the Corporation Counsel of the District of Columbia or any other legal entity designed and granted authority for the defense or offense of the District of Columbia. That is why the defendant(s) actions should be interpreted as an admission to the whole complaint and an agreement to the relief demanded and cost. Surely, the defendant(s)

representative would not allow such conditions to exist or persist in direct view of Federal Court Authority, being a member of the bar, engaging in actions which could disbar said defendant(s) representative (O. Gregory Lewis, # 266049). The defendant(s) admitted and conceded by law to the whole claim, and have conceded by law to the relief demanded and cost. I the plaintiff take this as a willingness on the part of the defendant(s) to make restitution and settle this action in favor of I the plaintiff Samuel N. McCoo, Jr., since the defendant(s) is represented by a competent member of the bar. Therefore the motion to move in favor of the plaintiff should be granted, Judgment should be entered in favor of the Plaintiff and the relief demanded to included cost, ordered.

I I THE PLAINTIFF SAMUEL N. McCOO AM ENTITLED TO A JUDGMENT IN MY FAVOR BY LAW.

I the plaintiff in filing the Motion to Move in Favor of the Plaintiff, filed such motion pursuant to Rule 56(a) of the Federal Rules of Civil Procedure moving for summary judgment. The actions of the defendant(s) by law concede to the entire claim, in that the defendant(s) have taken actions to legally admit and concede to the entire claim, the relief demanded, cost, and have defaulted. The defendant(s) are competent to the action and its' content. The defendant(s) representative is a member of the bar, of which he uses a bar number qualifying him to practice, that makes him a competent representative for the defendant(s). Therefore, with liability and

competency being established, I the plaintiff Samuel N. McCoo, Jr. am entitled to a judgment in my favor, and such judgment by law and default.

II. THE HEIGHTENED PLEADING STANDARD DOES NOT APPLY TO THIS ACTION

The heightened Pleading Standard does not apply to this action, the case law used by the defendant(s) is concerned with individual prosecution of "Government Officials", i.e. "SMITH v. NIXON" not "SMITH v. UNITED STATES. This action is "SAMUEL N. McCOO, JR. v. DISTRICT of COLUMBIA GOVERNMENT", the complaint clearly states its' objective and has demanded relief from the District of Columbia Government (refer to complaint, page Twenty-one of Twenty-one). The twenty-four attachments prove that the defendant(s) are in fact

competent to the action raised to this civil suit. The District of Columbia Government is not a government official (refer to the Memorandum in opposition to the defendant(s) motion to dismiss pages 11 to 12, paragraph XVII). Government Officials are not being prosecuted in this action, if Government Officials were being prosecuted in this action then I might agree, then damages would be sought from those individual Government Officials. However the District of Columbia Government is being prosecuted in this civil action of which the District of Columbia Government is not a Government Official. I the plaintiff Samuel N. McCoo, Jr. do not know who prevailed in the case "Smith v. Nixon", but I presume Nixon prevailed, since there is now such a case law of which is referred to by the defendant(s). That if Nixon did not

prevail then Nixon (Richard M. Nixon) the individual "Government Official" would have been liable to Smith. Again, I the plaintiff Samuel N. McCoo, Jr. state, the defense based upon the Heightened Pleading Standard is irrelevant in this action and is a premature defense.

III. THE SINGLE ALLEGED EXHIBIT SUBMITTED BY THE DEFENDANT(S)

The single alleged exhibit (refer to attachment No. 11 of the Affidavit of Cause of Action and refer to attachment No. 10 of the Affidavit of Cause of Action) submitted by the defendant(s) does not prove or reveal anything on behalf of the defendant(s) except that communication was made to the plaintiff Samuel N. McCoo, Jr. in the instant circumstance of which, time and damages had set in against I the plaintiff

Samuel N. McCoo, Jr. in the auspices of wrong doing being conducted by District of Columbia Authorities. That such communication was in fact meant to be intimidating to I the Plaintiff Samuel N. McCoo, Jr. by virtue of the authority of the sender, as was such the case with the personnel authority (refer to attachment No. 7 of the Affidavit of Cause of Action) and the D.C. Performance Rating Impartial Review Committee (refer to attachment No. 13 of the Affidavit of Cause of Action) and there are others such communications sent by persons under authority of the District of Columbia Government. That the exibit of which the defendant(s) representative refers and filings of papers referenced do not constitute or prove a lenghthy investigation by the defendant(s), or even that an investigation took place, and surely

does not reflect objectionable reasonableness on the part of the defendant(s).

IV. I THE PLAINTIFF SAMUEL N. McCOO, JR. SHOULD NOT HAVE TO SUFFER FURTHER HARDSHIP.

In view of the actions by the defendant(s), the law, and the entire record thus far concerning this action, the defendant(s) clearly legally admit and concede to the claim and concede to the relief demanded and cost. Therefore the Motions to Move in Favor of the Plaintiff should be granted, judgment entered, and relief ordered with cost. That dispositive documents and the Judgment Document should reflect: District of Columbia Government as defendant.

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985, 882-0109 (H)
(202) 767-7496 (W)

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr.

Plaintiff

vs.

District of Columbia Government
Mayor of the District of Columbia,
Mrs. Sharon Pratt Kelly (Dixon)
Council of the District of Columbia,
Mr. John A. Wilson, Chairman
Office of Employee Appeals,
Mr. Warren Cruise, Executive Director

Defendant(s)

Civil Action No. 91-3265

HOGAN, J. (TFH)

AFFIDAVIT OF FILING

LIST OF DOCUMENTS FILED

I the plaintiff, Samuel N. McCoo, Jr. do solemnly swear that the following, listed documents were filed in the following sequence and upon such filing receipt was rendered:

February 10, 1992:

1. Answer to Order.

2 Affidavit of mailing, Notice for Application for Default and Judgment.

3. Affidavit of mailing, Objection to Motion to Dismiss and Motion to Move in Favor of the Plaintiff.

4. Memorandum of Points and Authorities, in Opposition to the Motion to Dismiss and in support of Motion to Move in Favor of the Plaintiff.

5. Affidavit of Cause of Action, stating "Issue for Trial".

6. Affidavit of list of documents rendered with Affidavit of Cause of Action.

7. Affidavit of mailing, certifying

mailing to defendant(s).

8 Affidavit of filing with the Court.

February 10, 1992

Signature

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr. :
:
Plaintiff :
:
vs. :
:
District of Columbia Government :
Mayor of the District of Columbia, :
Mrs. Sharon Pratt Kelly (Dixon) :
Council of the District of Columbia, :
Mr. John A. Wilson, Chairman :
Office of Employee Appeals, :
Mr. Warren Cruise, Executive Director :
:
Defendant(s) :
---------- :

Civil Action No. 91-3265

HOGAN, J. (TFH)

AFFIDAVIT

LIST OF DOCUMENTS ACCOMPANIED WITH

AFFIDAVIT OF CAUSE OF ACTION

I the plaintiff, Samuel N. McCoo, Jr. do solemnly swear that the following, list documents that were submitted with the affidavit for the cause of action, on February 10, 1992 :

1. Memorandum from Mr. Lavirt Durrett, dated January 15, 1992, one page.

2. Letter to Mayor Sharon Pratt Dixon, dated October 23, 1991, two pages, receipt attached.

3. Letter to the Office of Employee Appeals, dated October 21, 1991, three pages.

4. Office of Employee Appeals, Opinion and Order, OEA Docket No. 1404-0122-91, date of issuance October, 1991, four pages.

5. Letter to Mayor Sharon Pratt Dixon, dated October 10, 1991, three pages, receipt attached.

6. Office of Employee Appeals, Initial Decision, OEA Docket No. 1404-0122-91, date of issuance

September 30, 1991, nine pages.

7. Letter from Deputy Assistant of Personnel, Grace-R. Permenter, dated June 12, 1991, one page, one enclosure attached.

8. Vacancy Announcement for "Computer Specialist", opening date 9-24-90, closing date 10-5-90, one page.

9. Letter to the Director of Personnel, dated May 25, 1991, one page, receipt attached.

10. Letter to the Director of Public Works, Betty Hager Francis, dated May 2, 1991, two pages, receipts attached.

11. Letter from the Director of Public Works, Betty Hager Francis, dated April 26, 1991,

two pages.

12 Memorandum for D.C Government Performance Rating Impartial Review Committee, referenced to Final Decision case No. 89-10 dated April 12, 1991, three pages.

13. Final Decision Documents from D.C. Performance Rating Impartial Review Committee, Case No. 89-10, dated April 4, 1991, seven pages.

14. Letter to Mayor Sharon Pratt Dixon, dated February 22, 1991, one page, receipt attached.

15. List of the Documents submitted to Council Member, John Wilson's Office as requested, dated September 7, 1990, one page, stamped received.

16. Letter to the Council Members of the District of Columbia, dated August 14, 1990, receipts attached

17. Letter to Council Member Nadine Winter, dated April 11, 1990, one page, receipts attached.

18. Letter to the Director of Public Works, John Touchstone, dated April 8, 1990, one page, receipts attached, attachment three pages.

19. Memorandum from Mr. John W. Yaag, Chief Bureau of Maintenance Services, dated May 22, 1990, two pages.

20. Letter to Mr. Jack Yaag, Chief of the Bureau of Maintenance Services, dated June 16, 1989, four pages, stamped received, and receipt attached.

21. Proposed Modification presented to Mr. Archie Little, dated June 6, 1988, three pages.

22. Personnel Performance Evaluation for the period April 1, 1988 to March 31, 1989, one page.

23. Personnel Performance Evaluation for the period April 1, 1989 to March 31, 1990, one page.

24. Pages from the District of Columbia Register, pages 5749, 5750, 5751, 5752, and 5753, dated September 12, 1986, concerning personnel performance ratings.

February 9, 1992

Signature

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr.

Plaintiff

vs.

District of Columbia Government
Mayor of the District of Columbia,
Mrs. Sharon Pratt Kelly (Dixon)
Council of the District of Columbia,
Mr. John A. Wilson, Chairman
Office of Employee Appeals,
Mr. Warren Cruise, Executive Director

Defendant(s)

Civil Action No. 91-3265

HOGAN, J. (TFH)

AFFIDAVIT CAUSE OF ACTION

I the plaintiff, Samuel N. McCoo, Jr. do solemnly swear to be true the aforementioned facts as would be admissible in evidence to oppose the defendant(s) motion to dismiss.

The cause of action of which gave rise to this civil suit is that I

have been continually deprived of rights, and that such continual deprivation of rights was intentional to force me into involuntary servitude until the discretion of District of Columbia Government Authorities is exercised to relinquish or dispose of me.

ISSUE FOR TRIAL:

INVOLUNTARY SERVITUDE CAUSED BY THE CONTINUAL DEPRIVATION OF RIGHTS BY DEFENDANT(S) TO PERMANENTLY DEPRIVE ME OF RIGHTS, FREEDOM, AND LIBERTY, THROUGH THE USE OF DISTRICT OF COLUMBIA GOVERNMENT PRACTICES.

1. I developed a modification of which the District of Columbia Government Authorities accepted and refused to allow me rights or benefits thereto for the Blue Plains Waste Water Treatment Facility, for the Department of Public

Works, from June 1988 to Present.

2. I was subjected to an invalid personnel performance rating in May 1989, for the period of April 1, 1988 to March 1989, in retaliation for such pursuits of the preservation, maintaining, and exercising of my rights. I contested such actions from May 24, 1989 to present. District of Columbia Government Authorities (Personnel Performance Rating Impartial Review Committee) admitted that I was correct but arbitrarily denied me restitution and from October 1991 to present, District of Columbia Government Authorities have written up alleged standards to reevaluate me specifically for the year 1988 to 1989, in the year 1992. I have been slandered by two evaluations of which were denied to be nullified and removed, placed against

the agency and the District of Columbia Government in the process, and denied a fair pre-hearing and official hearing, at the level of the Office of Employee Appeals and mislead in to Court Procedures forcing me to appeal to the District of Columbia Court of Appeals for the District of Columbia to Appeal such decision.

3. I applied for a position vacancy "Computer Specialist" within the District of Columbia Government. I was denied because it was stated that I lacked one year experience as a District Service Grade 12 Computer Specialist. The Vacancy was open to the public, and that said experience could be equivalent. I contested the rejection from October 1990 to July 1991, the Personnel Director refused to hear my grievance and arbitrarily closed the

position vacancy. This was a competitive position allegedly open to the public, for qualified applicants.

4. The District of Columbia Government Authorities from 1988 to present deliberately committed and conspired to deprived me of rights with the intent that I would have very little chance to recover by legal means from such actions compounded upon me. District of Columbia Government Authorities allowed deficiencies in the performance rating and review process for use, for or against an employee at the sole discretion of the District of Columbia Government Authority responsible for the sole purpose of aiding to control and if so desiring to inflict injury. Injury was inflicted upon me and such system was allowed to continue in operation even with the facts already known of the

hazards of such a system.

5 District of Columbia Government Authorities have committed fraud, conspiracy, assault, misrepresentation, and use neglect as a tool to assist in carrying out their acts.

6. My life was immediately altered as a result of being subjected to this system. Where in 1988 I had made preparations to enact a business plan unrelated to the job to produce taxable income, began development of a product for marketing and income purposes, to continue with my education, and development of my family, I was very rudely and unnecessarily interrupted by District of Columbia Government Authorities subjecting me to this process. That ninety percent of my time away from the job is and was spent trying to recover, protect, and defend

my rights to freedom and freedoms that I earned the privilege of, benefits earned through my labor, and liberties thereof. That District of Columbia Government Authorities actually committed to acts to deny my rights and freedom, and place undeserved hardships upon me and my family. That in approximately four more months, this entire situation will have lasted four years, time from me that can never be replaced. I was in the prime of my development, I was twenty-six years of age.

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985, 882-0109 (H)
(202) 767-7496 (W)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr.

Plaintiff

vs

District of Columbia Government
Mayor of the District of Columbia,
Mrs. Sharon Pratt Kelly (Dixon)
Council of the District of Columbia,
Mr. John A. Wilson, Chairman
Office of Employee Appeals,
Mr. Warren Cruise, Executive Director

Defendant(s)

Civil Action No. 91-3265

HOGAN, J. (TFH)

Magistrate Alan Kay

MEMORANDUM of Points and Authorities

IN OPPOSITION TO THE DEFENDANT(S)

MOTION TO DISMISS AND IN SUPPORT OF THE

MOTION TO MOVE IN FAVOR OF THE PLAINTIFF

Preliminary Statement

I the plaintiff, Samuel N. McCoo,

Jr. received the defendant(s)

"Motion to Dismiss, January 16, 1992. On January 24 1992 I the plaintiff, Samuel N. McCoo, Jr. filed with the Court an Objection to the Defendant(s) motion and a Motion to move in favor of the plaintiff, based on grounds of Federal Rules of Civil Procedure and Federal Statutes, in opposition to the defendant(s) Motion to Dismiss. In reference to the action taken by the defendant(s), the defendant(s) appear to be conceding to the plaintiffs' complaint and concede without verbal admission. I the plaintiff Samuel N. McCoo, Jr. am not going to assume the Defendant(s) intentions, however I the plaintiff am entitled by law and the Federal Rules of Civil Procedure, to a judgment in my favor on the entire matter, and as a result the defendants, although entitled to a judgment, <u>should</u> the court include the outside matters,

cannot prevail because the defendant(s) failed to meet the necessary requirements to prevail for a judgment in the defendant(s) favor, in that the defendant(s) failed to answer to the complaint, have failed to deny the averments, and have defaulted. The motion by the defendant(s) does not preclude the defendant(s) responsibility to answer to the complaint, regardless of the questions of legality of the complaint, of which the defendant(s) refer. The defendant(s) failed to answer to the complaint, failed to deny the averments of the complaint, and are in default. The defendant(s) by law, can not prevail. The outside matters to support the defendant(s) motion are demurrers and should not be accepted by the court, since demurrers are in fact abolished by the Federal Rules of Civil Procedure. Since it is by the Federal

Rules of Civil Procedure that the matter in whole submitted by the defendant(s) is an admission then it should be recognized as an admission since no other effort to answer to the complaint has been made and the defendant(s) have defaulted, the Court should enter a judgment in favor of the plaintiff.

I. THE DEFENDANTS MOTION IS UNSUPPORTED TO DISMISS THIS ACTION.

The defendant(s) although taking an action for defense in moving for a summary judgment, failed to answer to the complaint; Rule 7(a) of the Federal Rules of Civil Procedure: There shall be a complaint and an answer; .....The defendant(s) have no grounds to have an action dismissed, because the defendants failed to answer to the complaint and

for dismissal of the complaint in a form as such to request a summary judgment. There being no answer to the complaint, waives the defendant(s) rights to such motion prior to judgment, leaving the defendant(s) with only the right to appeal after a judgment has been rendered against the defendant(s).

II. DEFENDANT(S) ONLY QUESTION THE LEGAL SUFFICIENCY OF THE COMPLAINT WHILE REQUESTING SUMMARY JUDGMENT.

The defendant(s) claim for defense is a demurrer, pursuant to rule 12(b)(6) of the Federal Rules of Civil Procedure, making application for a summary judgment to dismiss the action.

Definition: DEMURRER; LAW; a pleading which claims that the contentions submitted by the opposing party are insufficient in law to

warrant his justification in bringing action. Definition from "THE NEW WEBSTER ENCYCLOPEDIC DICTIONARY OF THE ENGLISH LANGUAGE", AVENEL BOOKS, NEW YORK, 1984.

III. THE GROUNDS UPON WHICH THE DEFENDANT(S) MOTION TO DISMISS ARE BASED, IS ABOLISHED BY RULE.

Federal Rules of Civil Procedure, Rule 7(c) Demurrers, Pleas, Etc., Abolished. Demurrers, pleas, and exceptions for insufficiency of a pleading shall not be used.
The defendant(s) only question the legal sufficiency of the complaint to support its' motion to dismiss.

IV. THE DEFENDANT(S) MOTION TO DISMISS, TO BE CONSIDERED FOR SUMMARY JUDGMENT, IS IN FACT AN ACTION TO CONCEDE TO THE

PLAINTIFFS' COMPLAINT.

The defendant(s) motion although pursuant to the Federal Rules of Civil Procedure is an action conducted by competent persons who chose a representative of the bar to represent the defendant(s) in this action. The defendant(s) action based upon the rules, is in fact, an act to appear in the action and concede to the complaint filed by the plaintiff, and such conditions subject to the Federal Rules of Civil Procedure, i.e., Judgment by Default, Relief as Demanded in the Complaint, and Cost.

V. EFFECT OF FAILURE TO DENY.

The Defendant(s) failed to deny any of the averments of the complaint. Federal Rules of Civil Procedure, Rule 8(d) Effect of Failure to Deny.

Averments in a pleading to which a responsive pleading is required, other than those as to amount of damages, are admitted when not denied in the responsive pleading. Averments in a pleading which no responsive pleading is required or permitted shall be taken as denied or avoided.

VI. THE DEFENDANT(S)' TIME TO FILE AN ANSWER HAS EXPIRED.

The defendant(s)' in moving for a motion to dismiss had time remaining to answer to the complaint but, failed to answer to the complaint within the prescribed time, and no extension of time has been granted for such an answer. The defendant(s) have had thirty-eight days excluding holidays and are subject to a judgment against the defendant(s) by default.

VII DEFAULT.

Federal Rules of Civil Procedure, Rule 55(b)(2). Default (b) Judgment. Judgment by default may be entered as follows: (2) By the Court. In all other cases the party entitled to a judgment by default shall apply to the court therefore; but no judgment by default shall be entered against an infant or incompetent person unless represented in the action by a general guardian, committee, conservator, or other such representative who has appeared therein. If the party against whom judgment by default is sought has appeared in the action, the party (or, if appearing by representative, the party's representative) shall be served with written notice of the application for judgment at least 3 days prior to the hearing on such application. If, in order to enable the court to enter

judgment or to carry it into effect, it is necessary to take account or to determine the amount of damages or to establish the truth of any averment by evidence or to make an investigation of any other matter, the court may conduct such hearings or order such references as it deems necessary and proper and shall accord a right of trial by jury to the parties when and as required by any statute of the United States.

VIII. THE DEFENDANT(S)' MEMORANDUM OF POINTS AND AUTHORITIES IS PURELY AN ANTAGONISTIC SPECULATIVE INTERJECTED DOCUMENT WHICH QUESTIONS LEGAL SUFFICIENCY.

The Defendant(s) memorandum to support its' motion is nothing more than opinionated criticisms and is scandalous, impertinent, immaterial,

speculative, and an interjected document, questioning the legal sufficiency of the complaint, and therefore, should be stricken from the record, because it is nothing more than a demurer. Refer to defendant(s) memorandum of points and authorities in support of its' motion to dismiss. The defendant(s) memorandum indirectly acknowledges the claim of "Deprivation of Rights", but compares the plaintiffs' claim of intentional deprivation to that of a case of which unintentional deprivation occurred in a claim for deprivation of rights, and therefore is irrelevant to this case, because of the state of mind of the defendant(s) which the plaintiff of this case stated with specificity (refer to complaint paragraphs 4 to 36) in the action. There is a difference in an accidental act and an act intentionally committed.

IX. DEFENDANT(S) MOTION IS UNSUPPORTED BY ITS' CLAIM

The Defendant(s) motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure fails, (Failure to state a claim upon which relief can be granted) is a demurrer, while moving for a summary judgment. I the Plaintiff Samuel N. McCoo, Jr., in fact did state a claim of being continually "Deprived of Rights", "Assaulted", and "Defamed" of which is a claim of deprivation of rights. Continually Deprived of Rights; intentional successive acts (described in complaint paragraphs 4 to 36) to deny proper freedoms, liberties, and privileges supported by law. Continually Assaulted; those actions intentionally committed to intimidate and threaten I the plaintiff Samuel N. McCoo, Jr. if I the plaintiff Samuel N. McCoo, Jr.

resulted to actions entitled, placing the burden of fear on I the plaintiff Samuel N. McCoo, Jr. of retaliation. Such actions against I the plaintiff Samuel N. McCoo, Jr. does not allow me the plaintiff Samuel N. McCoo, Jr. to be secure in my person or property. Continually Defamed; (Slander and libel) deprives me the plaintiff Samuel N. McCoo, Jr. of freedom, liberties, and privileges, earned through my person, work, and accomplishments. The defendant(s) did in fact conspire to further such denial of rights, and also committed to other unlawful acts to maintain unfair advantage of I the plaintiff Samuel N. McCoo, Jr. in an attempt to insure that there be no recovery of rights by I the plaintiff Samuel N. McCoo, Jr. The actions were continuous and the sustaining effects resulted in permanent constitutional

deprivations of freedom, rights, and liberties, and has in fact placed I the plaintiff Samuel N. McCoo, Jr. into involuntary servitude, until the defendant(s) discretion is exercised to relinquish or dispose of I the plaintiff-Samuel N. McCoo, Jr. "Cause of Action", to which gave rise to civil action (refer to complaint, paragraph 36, page twenty-one of twenty-one).

X. PLAINTIFF FILED PLEADING PURSUANT TO RULE 10(b) OF THE FEDERAL RULES OF CIVIL PROCEDURE, "FORM OF PLEADINGS".

Federal Rules of Civil Procedure, Rule 10(b) PARAGRAPHS; SEPARATE STATEMENTS. All averments of claim and defense shall be made in numbered paragraphs, the contents of each of which shall be limited as far as

practicable to a statement of a single set of circumstances; and a paragraph may be referred to by number in all succeeding pleadings. Each claim founded upon a separate transaction or occurrence and each defense other than denials shall be stated in a separate count or defense when ever a separation facilitates the clear presentation of the matters set forth.

XI. DEPRIVATION OF RIGHTS, IS A CLAIM OF WHICH RELIEF CAN BE GRANTED PURSUANT TO Title 42 SECTION 1983.

Title 42 section 1983 "Civil Action for Deprivation of Rights"

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of

the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

For the purpose of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

XII. TITLE 42 SECTION 1988.

PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS; ATTORNEY'S FEES.

The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of titles 13, 24, and 70 of the Revised Statutes for the protection of all

persons in the United States in their civil rights, and for their vindication, shall be exercised and enforced in conformity with the laws of the United States, in so far as such laws are suitable to carry the same into effect; but in all cases where they are not adapted to the object, or are deficient in the provisions necessary to furnish suitable remedies and punish offenses against law, the common law, as modified and changed by the constitution and statutes of the State wherein the court having jurisdiction of such civil or criminal cause is held, so far as the same is not inconsistent with the Constitution of the United States, shall be extended to and govern said courts in the trial and disposition of the cause, and if it is of a criminal nature, in the infliction of punishment on the party found guilty. In any action or

proceeding to enforce a provision of sections 1981, 1982, 1983, 1985, and 1986 of this title, title IX of Public Law 92-318 [20 U.S.C. 1681 et seq.], or title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000 et seq.], the court in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs.

XIII. CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS.

Title 42 Section 1985(2) Obstructing justice; intimidating party, witness, or juror. If two or more persons in any State or Territory conspire to deter, by force, intimidation, or threat, any party or witness in any court of the United States from attending such court, or from testifying to any matter pending therein, freely, fully, and truthfully,

or to injure such party or witness in his person or property on account of his having so attended or testified, or to influence the verdict, presentment, or indictment of any grand or petit juror in any such court, or to injure such juror in his person or property on account of any verdict, presentment, or indictment lawfully assented to by him, or of his being or having been such juror, or if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with the intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws;

XIV. CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS.

Title 42 Section 1985(3) Depriving persons of rights or privileges. If two or more persons in any State or Territory conspire or go in disguise on the highway or on the premises of another, for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws, or of equal privileges and immunities under the laws; or for the purpose of preventing or hindering the constituted authorities of any State or Territory from giving or securing to all persons within such State or Territory the equal protection of the laws; or if two or more persons conspire to prevent by force, intimidation, or threat, any citizen who is lawfully entitled to vote, from

giving his support or advocacy in a legal manner, toward or in favor of the election for President or Vice-President, or as a Member of Congress of the United States; or to injure any citizen in his person or property on account of such support or advocacy; in any case of conspiracy set forth in this section, if one or more persons engaged therein do, or cause to be done, any act in furtherance of the object of such conspiracy, whereby another is injured in his person or property, or deprived of having and exercising any right or privilege of a citizen of the United States, the party so injured or deprived may have an action for the recovery of damages occasioned by such injury or deprivation, against any one or more of the conspirators.

XV. Title 42 SECTION 1986. ACTION FOR NEGLECT TO PREVENT.

Every person who, having knowledge that any of the wrongs conspired to be done, and mentioned in section 1985 of this title, are about to be committed, and having power to prevent or aid in preventing the commission of the same, neglects or refuses so to do, if such wrongful act be committed, shall be liable to the party injured, or his legal representatives, for all damages caused by such wrongful act, which such person by reasonable diligence could have prevented; and such damages may be recovered in an action on the case; and any number of persons guilty of such wrongful neglect or refusal may be joined as defendants in the action; and if the death of any party be caused by any such wrongful act and neglect, the legal representatives of the deceased

shall have such action therefore, and may recover not exceeding $5,000 damages therein, for the benefit of the widow, and if there be no widow, then for for the benefit of the next of kin of the deceased. But no action under the provisions of this section shall be sustained which is not commenced within one year after the cause of action has accrued.

XVI. DIVERSITY OF CITIZENSHIP

I the plaintiff enjoy the privilege of diverse citizenship constituted by the 14 amendment section 1. of the Constitution of the United States. I, Samuel N. McCoo, Jr. am a citizen of the United States and by virtue of being employed with the District of Columbia Government absolutely do not and have not relinquished by contract or any other means peaceably, any rights,

privileges, or immunities afforded by the same, and although under oath to the District of Columbia as an employee to uphold the Constitution and the Laws of the United States, in that order, without being under oath and being a citizen, would and will continue to the best of my ability to uphold the same against all who tread to infringe upon the same.

XVII. THE HEIGHTENED PLEADING STANDARD IS IRRELEVANT

In reference to the formentioned paragraphs 11, 12, 13, 14, and 15, the "Heightened Pleading Standard" is irrelevant and inconsistent with the Constitution of the United States, the laws do not provide any immunities regarding "Government Officials" when a person or class of persons are being deprived of rights, privileges, or

immunities, secured by the Constitution and the Laws of the United States, by said "Government Officials". Case law does not over rule the Constitution or the Laws placed in "Statute" of the United States. The assertion made by the defendant(s) is contradictory to the grounds upon which the defendants made motion to dismiss for failure to state a claim upon which relief can be granted, to do so acknowledges that there is a claim, with the stipulation that relief can be granted, which is a demurrer. The defendant(s) only question the legality of the complaint and raises questions of legal liability. However, I the plaintiff, in this action against said defendant(s) have commenced this action against the District of Columbia Government of which in this action each actual person listed as a defendant is a head of the subparts of the body in

whole and are responsible for the actions conducted in the name of the District of Columbia Government in their realm of authority. The Chief Executive of said government is responsible for all actions conducted in the name of said government and acts of the employees, the Council is responsible for legislation and oversight of said government, and the Office of employee appeals is responsible for its' actions in its' capacity, and it is there for proper that the heads of these bodies be listed as defendants for the District of Columbia. In the complaint (refer paragraphs 16, 19, 20, 23, 28, 29, 30, 33, 34). It is common knowledge that the Chief Executive (Mayor of the District of Columbia) of the District of Columbia is responsible for decisions in any action which requires the District of Columbia to answer and/or act in such

matters of claims or suits at law and in equity, as well as being responsible for actions conducted in the name of said government. That such Executives are responsible for the actions of their subordinates and the body (District of Columbia Government) is liable for actions caused by such a body. The District of Columbia Government is not a "Government Official".

XVIII. THE DEFENDANT(S) MOTION TO DISMISS IS UNSUPPORTED BY RELEVANT FACTS OR LAWS.

It is by fact, rule, and law, as included in the formentioned paragraphs that the defendants would not be entitled to the motion to dismiss this action. The defendant(s) failed the responsibility to answer to the complaint, the Defendant(s) were summoned by the court to answer to the

complaint

XIX. THE PLAINTIFF IS ENTITLED TO A JUDGMENT IN HIS FAVOR

It is by the same facts, rules, and laws, as included in the formentioned paragraphs that the plaintiff should be granted his motion for the court to move in favor of the plaintiff on all the matters.

XX. JUDGMENT FOR THE PLAINTIFF NEED NOT BE DELAYED

It is by the same facts, rules, and laws, as included in the formentioned paragraphs that judgment in favor of the plaintiff should be granted. The facts, legality, and liability being known and the defendant(s) being in default entitle I the plaintiff Samuel N. McCoo, Jr. to be vindicated and prevail, by law. I the plaintiff Samuel N. McCoo,

Jr need not further suffer.

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985, 882-0109 (H)
(202) 767-7496 (W)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr.

Plaintiff

v.

Civil Action No. 91-3265

District of Columbia Government
Mayor District of Columbia
Mrs. Sharon Pratt Kelly (Dixon)
Council of the District of Columbia
Mr. John A. Wilson, Chairman
Office of Employee Appeals,
Mr. Warren Cruise, Executive Directo

Defendants.

DEFENDANTS' MOTION TO DISMISS

Defendants District of Columbia Government, Mayor Sharon Pratt Kelly, Mr. John A. Wilson, the Office of Employee Appeals and Mr. Warren Cruise move this Court, pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, to dismiss the complaint in the instant case on the grounds that:

1. The complaint fails to state a cause of action upon either common law or Constitutional grounds against these defendants upon which relief can be granted.

2. The doctrines of comity and pendent jurisdiction require that this Court refrain from excercising jurisdiction over this matter.

3. The individual defendants have absolute immunity from civil liability for actions taken in furtherance of their official duties.

4. The Office of Employee Appeals is non sui juris.

Respectfully submitted,

JOHN PAYTON
Corporation Counsel, D.C.

MARTIN L. GROSSMAN
Deputy Corporation Cousel, D.C.

WILLIAM J. EARL
Assistant Corporation Counsel, D.C.

O. GREGORY LEWIS (266049)
Assistant Corporation Counsel, D.C.
1350 Pennsylvania Ave. N.W.
Room 326
Washinton, D.C. 20004
(202) 727-9350

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Defendants' motion to dismiss was mailed this 13th day of January, 1992, to the following person:

Samuel N. McCoo, Jr.
3917-7th St. N.W.
Washington, D.C. 20011

_____
O. Gregory Lewis
Assistant Corporation Counsel

app. 134

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr. :
:
Plaintiff :
:
vs. :
:
District of Columbia Government :
Mayor of the District of Columbia, :
Mrs. Sharon Pratt Kelly (Dixon) :
Council of the District of Columbia, :
Mr. John A. Wilson, Chairman :
Office of Employee Appeals, :
Mr. Warren Cruise, Executive Director :
:
Defendant(s) :
---:

Civil Action No. 91-3265

HOGAN, J. (TFH)

AFFIDAVIT OF MAILING OF OBJECTION and

MOTION TO MOVE IN FAVOR OF PLAINTIFF

I the plaintiff, Samuel N. McCoo, Jr., hereby state that:

On the TWENTY-FOURTH day of JANUARY, 1992, I caused to be deposited in the United States Mail an OBJECTION and a MOTION TO MOVE IN FAVOR OF THE PLAINTIFF

in the above captioned case, certified with requested return receipt, addressed to the defendant(s) representative of record for the District of Columbia Government:

O. Gregory Lewis, Assistant Corporation
Counsel Corporation Counsel,
District of Columbia
1350 Pennsylvania Avenue, N.W.,
Room #206
Washington, D.C., 20004

I have a receipt to certify mailing and have received the return receipt, No. # P 302 645 064 (all attached hereto), indicating that delivery of the Objection and Motion to Move in Favor of the Plaintiff was made upon said defendant(s) representative, dated

JANUARY 29, 1992.

Signature

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr. :
:
Plaintiff :
:
vs. :
:
District of Columbia Government :
Mayor of the District of Columbia, :
Mrs. Sharon Pratt Kelly (Dixon) :
Council of the District of Columbia, :
Mr. John A. Wilson, Chairman :
Office of Employee Appeals, :
Mr. Warren Cruise, Executive Director :
:
Defendant(s) :
---:

Civil Action No. 91-3265

HOGAN, J. (TFH)

MOTION: TO MOVE IN FAVOR OF THE PLAINTIFF

I the Plaintiff, Samuel N. McCoo, Jr. make a motion to the Court to move, pursuant to Rule 56(a) of the Federal Rules of Civil Procedure, in favor of the Plaintiff on the following grounds:

1. The Defendant(s) motioned,

pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, in a manner as such to move for a summary judgment to dismiss the complaint.

2. Pursuant to Title 42 section 1983 "Civil Action for Deprivation of Rights", Defendant(s) are liable to the party injured in an action at law....

3. The Coutrt's jurisdiction is conferred by law, on the District Courts,...shall be excercised and enforced in conformity with the laws of the United States so far as such laws are suitable to carry the same into effect... Title 42 section 1988 "Proceddings in Vindication of Civil Rights; Attorney's Fees" and further,... to enforce

sections 1981, 1982, 1983, 1985, 1986, and may grant reasonable attorney's fees to the prevailing party except, the United States.

4. Plaintiff must prevail, pursuant to Rule 8(d) of the Federal Rules of Civil Procedure "EFFECT OF FAILURE TO DENY." Avernments in a pleading to which a responsive pleading is required, other that those as to the amount of damages, are admitted when not denied in the responsive pleadingf.... The Defendant(s) failed to deny all of the avernments of the pleading of the complaint.

5. The Defendant(s) memorandum to support its' motion is an isufficient defense, impertinent, immaterial, speculative,

interjected document, and therefore, should be stricken from the record.

6 In view of the facts and laws so stated, I the Plaintiff Samuel N. McCoo, Jr., am entitled to judgment in my favor based upon law.

For the reasons and facts so stated, the plaintiff's motion to move in favor of the plaintiff, should be granted:

1. JUDGMENT ENTERED FOR PLAINTIFF
2. The STRIKING OF the DEFENDANT(S) MEMORANDUM,
3. The RELIEF DEMANDED IN THE COMPLAINT,
4. ATTORNEY'S FEES FOR THE PLAINTIFF,

and the same herein, should be ordered. It is LAW, upon which the plaintiff

would so prevail.

Respectfully submitted,

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985, 882-0109 (H)
(202) 767-7496 (w)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr.

Plaintiff

vs.

District of Columbia Government
Mayor of the District of Columbia,
Mrs. Sharon Pratt Kelly (Dixon)
Council of the District of Columbia,
Mr. John A. Wilson, Chairman
Office of Employee Appeals,
Mr. Warren Cruise, Executive Director

Defendant(s)

Civil Action No. 91-3265

HOGAN J, TFH

OBJECTION: TO MOTION TO DISMISS

I the Plaintiff, Samuel N. McCoo, Jr., OBJECT, to the Defendant(s) MOTION TO DISMISS, on the following grounds:

1. The Defendant(s) motion pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, fails

to present a genuine issue, while moving for a summary judgment.

2. I the Plaintiff Samuel N. McCoo, Jr., in fact did state a claim of being continually "Deprived of Rights", of which is the "cause of action", to which gave cause to civil proceedings of law.

3. This claim pursuant to Title 42 section 1983 is a claim to which relief can be granted.

4. Pursuant to Title 42 section 1983 "Civil Action for Deprivation of Rights", Defendant(s) do not have absolute immunity and are liable to a party injured in an action at law....

5. The Courts jurisdiction is conferred by law, Title 42 section 1988 "Proceedings in

Vindication of Civil Rights; Attorney's Fees", on the District Courts,...shall be exercised and enforced in conformity with the laws of the United States so far as such laws are suitable to carry the same into effect...and further states, .. to enforce sections 1981, 1982, 1983, 1985, 1986, and may grant reasonable attorney's fees to the prevailing party except, the United States.

6. The Office of Employee Appeals being non sui juris is irrelevant.

7. The Defendant(s) memorandum to support its' motion is nothing more than opinionated criticisms and is an insufficient defense, and is scandalous, impertinent, immaterial, speculative,

interjected document, and therefore, should be stricken from the record.

8 For the facts and laws so stated, judgment for the Defendant(s) can not prevail, as a matter of law.

Respectfully submitted,

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 882-8985, 882-0109 (H)
(202) 767-7496 (W)

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 767-7496
(202) 882-8985, (202) 882-0109

PLAINTIFF(s)

vs.

DISTRICT OF COLUMBIA GOVERNMENT
Mayor of the District of Columbia, Mrs. Sharon Pratt Kelly (Dixon)
Council of the District of Columbia, Mr. John A. Wilson, Chairman
1350 Pennsylvania Avenue, N.W.
Washington, D.C., 20004
Office of Employee Appeals, Mr. Warren Cruise, Executive Director
415 12th Street, N.W.
Washington, D.C., 20004

DEFENDANT(s)

Civil Action No. 91 3265

AFFIDAVIT OF MAILING

I, Samuel N. McCoo, Jr., hereby state that:

On the TWENTY-FIRST day of DECEMBER, 1991, I caused to be deposited in the United States Mail summonses and

copies of the complaint in the above captioned case, certified with requested return receipt, addressed to the following defendant(s) for the District of Columbia Government:

Mayor of the District of Columbia,
Mrs. Sharon Pratt Kelly (Dixon)
1350 Pennsylvania Avenue, N.W.
Washington, D.C., 20004

Council of the District of Columbia,
Mr. John A. Wilson, Chairman
1350 Pennsylvania Avenue, N.W.
Washington, D.C., 20004

Office of Employee Appeals, Mr.
Warren Cruise, Executive Director
415 12th Street, N.W.
Washington, D.C., 20004

I have received the receipt for the certified mail, listed and corresponding respectively to the Defendant(s) for the District of Columbia Government herein, No. P 302 645 062, No. P 415 972 591, No. P 327 983 247 (all attached hereto), indicating that delivery of the summons and complaint was made upon said

Defendant(s) (listed respectively) on the TWENTY-FOURTH day of DECEMBER, 1991, on the TWENTY-FOURTH day of DECEMBER, 1991, on the TWENTY-THIRD day of DECEMBER, 1991.

January 6, 1992

Signature

United States District Court

_____District of District of Columbia

SUMMONS IN CIVIL ACTION

Case No.: 91 3265

HOGAN, J. TFH

Mr. Samuel N. McCoo, Jr.

Plaintiff

V.

District of Columbia Government

Defendant

To: Mayor of the District of Columbia,
Mrs. Sharon Pratt Kelly (Dixon)
1350 Pennsylvania Avenue, N.W.
Washington, D.C., 20004

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

Plaintiff's Attorney

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon

you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

NANCY MAYER-WHITTINGTON
CLERK

DEC 20 1991
DATE

A. CAESAR MOBLY
BY DEPUTY CLERK

United States District Court

_____District of District of Columbia

SUMMONS IN CIVIL ACTION

Case No.: 91 3265

HOGAN, J. TFH

Mr. Samuel N. McCoo, Jr.

Plaintiff

V.

District of Columbia Government

Defendant

To: Council of the District of Columbia,
Mr. John Wilson, Chairman
1350 Pennsylvania Avenue, N.W.
Washington, D.C., 20004

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

Plaintiff's Attorney

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon

you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

NANCY MAYER-WHITTINGTON
CLERK

DEC 20 1991
DATE

A. CAESAR MOBLY
BY DEPUTY CLERK

United States District Court

_____District of District of Columbia

SUMMONS IN CIVIL ACTION

Case No.: 91 3265

HOGAN, J. TFH

Mr. Samuel N. McCoo, Jr.

Plaintiff

V.

District of Columbia Government

Defendant

To: Office of Employee Appeals, Mr.
Warren Cruise, Executive Director
415 12th Street, N.W.
Washington, D.C., 20004

YOU ARE HEREBY SUMMONED and required to file with the Clerk of this Court and serve upon

Plaintiff's Attorney

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011

an answer to the complaint which is herewith served upon you, within 20 days after service of this summons upon

you, exclusive of the day of service. If you fail to do so, judgment by default will be taken against you for the relief demanded in the complaint.

NANCY MAYER-WHITTINGTON
CLERK

DEC 20 1991
DATE

A. CAESAR MOBLY
BY DEPUTY CLERK

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

Samuel N. McCoo, Jr.
3917-7th Street, N.W.
Washington, D.C., 20011
(202) 767-7496
(202) 882-8985, (202) 882-0109

PLAINTIFF.

vs.

DISTRICT OF COLUMBIA GOVERNMENT
Mayor of the District of Columbia, Mrs. Sharon Pratt Kelly (Dixon)
Council of the District of Columbia, Mr. John A. Wilson, Chairman
1350 Pennsylvania Avenue, N.W.
Washington, D.C., 20004
Office of Employee Appeals,
Mr. Warren Cruise, Executive Director
415 12th Street, N.W.
Washington, D.C., 20004

DEFENDANT.

DEC. 20, 1991

HOGAN, J. (TFH)

Civil Action No. 91-3265

COMPLAINT FOR DAMAGES (NEGLIGENCE, CONSPIRACY AGAINST RIGHTS, ASSAULT, FRAUD, DEFAMATION, OBSTRUCTION OF JUSTICE, MISREPRESENTATION, CONFLICT OF INTEREST, DEPRIVIATION OF RIGHTS)

1 Plaintiff invokes jurisdiction of this Court pursuant to Title 28, Section 1330, Section 1332, Section 1343.

2. The Plaintiff is a citizen of the United States and a resident of the District of Columbia.

3. The Defendant District of Columbia Government is a Government of the United States of which Mrs. Sharon Pratt Kelly (Dixon) is Mayor who is a citizen of the United States and is a resident of the District of Columbia and of which Mr. John A. Wilson is the Chairman of the Council of the District of Columbia who is a citizen of the United States and a resident of the District of Columbia.

4. In June 1988 the Plaintiff Samuel N. McCoo, Jr. presented a proposal of a modification to provide

substantial savings from and increased efficiency for the Dissolved Air Flotation Thickening Systems (DAF System), at the Blue Plains Waste Water Treatment Facility, to Defendant District of Columbia Government Authorities in the Department of Public Works (Mr. Lavirt Durrett, Mr. Archie Little). About July 1988, the Defendant District of Columbia Government Authority (Mr. Lavirt Durrett) so stated the acceptance of the proposed modification. About August 1988 work had begun for installation of the proposed modification, that had been proposed by the Plaintiff Samuel N. McCoo Jr. The Defendant District of Columbia Government Authority (Mr. Lavirt Durrett) blatantly and negligently refused to allow the Plaintiff Samuel N. McCoo Jr., to perform the installation of the proposed modification, and

committed blatant intentional reckless negligence to deny the Plaintiff his Constitutional Rights, in violation of the United States Constitution Amendment 5, Amendment 9, Amendment 14 Section 1., under the Constitution of the United States.

5. In July 1988 The Plaintiff was reassigned to work in another area at the Blue Plains Waste Water Treatment Plant, by the Defendant District of Columbia Government Authority (Mr. Lavirt Durrett). About the end of July to August 1988, The Plaintiff Samuel N. McCoo, Jr. did so make a complaint and respectfully requested from the Defendant District of Columbia Government Authority (Mr. Archie Little) full participation in the installation of his proposed modification. The Plaintiff Samuel N. McCoo Jr. was told

by the Defendant District of Columbia Government Authority (Mr. Archie Little) that it was up to the Supervisor to assign men to install the modification of which the Plaintiff Samuel N. McCoo Jr had proposed. The Defendant District of Columbia Government Authority (Mr. Archie Little) intentionally and recklessly neglected to take action, in violation of Title 18 U.S.C. Section 1986, to correct this situation, denying the Plaintiff's Constitutional Rights in violation of the United States Constitution, Constitutional Amendment 4, Amendment 5, Amendment 9, and Amendment 14 Section 1., under the Constitution of the United States.

6. On or About August 4, 1988 the Plaintiff Samuel N. McCoo, Jr. was in a vehicle accident in which he was injured and suffered trauma and a leg injury.

Plaintiff Samuel N. McCoo, Jr. made and submitted a report of the incident. The Plaintiff Samuel N. McCoo Jr. described the incident as intentional and was intended to frighten him. The Plaintiff believes the incident was a result of proposing the modification to save the government money. In August 1988 the Defendant District of Columbia Government Authority (Mr. Lavirt Durrett) harassed the Plaintiff and reassigned him to work alone and refused to provide him transportation, making him carry approximately forty pounds of test equipment to and from these work locations (Approximately one half mile to and from), to intentionally assault mentally, punish, and intimidate, the Plaintiff Samuel N. McCoo Jr., violating Title 18 U.S.C. 113 and the Constitutional rights of the Plaintiff Samuel N. McCoo, Jr., in violation of

the United States Constitution Amendment 1, Amendment 4, Amendment 5, Amendment 9, and Amendment 14 Section 1. of the Plaintiff Samuel N. McCoo Jr., in retaliation for requesting to be allowed to install the modification of which he the Plaintiff Samuel N. McCoo Jr. had proposed and for writing the report of the incident of which the Plaintiff Samuel N. McCoo Jr. was injured. The Defendant District of Columbia Government Authority (Mr. Lavirt Durrett) continually Harassed, Assaulted, and Slandered the Plaintiff Samuel N. McCoo Jr., to oppress, intimidate, and to cause personal and professional injury to the Plaintiff Samuel N. McCoo Jr., violating the rights of the Plaintiff Samuel N. McCoo Jr., afforded him by the Constitution of the United States, violating Constitutional Amendment 1, Amendment 4,

Amendment 5, Amendment 9 and Amendment 14 Section 1 and Title 18 U S C Section 113, Section 1986

7. In May 1989 The Defendant District of Columbia Government Authority (Mr. Lavirt Durrett) with premeditation subjected the Plaintiff Samuel N. McCoo Jr., to an invalid Personnel Performance Rating System, unsupported by standards, in violation of the Constitution of the United States, Constitutional Amendment 5, Amendment 9, Amendment 14 Section 1. The Defendant District of Columbia Government Authority (Mr. Lavirt Durrett) willfully and intentionally with negligence maliciously did so with the intent to commit fraud against the Plaintiff Samuel N. McCoo Jr., in violation of Title 18 U.S.C. Section 1001, to compound assault, in violation

of Title 18 U S C 113, to commit intentional personal and professional injury to the Plaintiff Samuel N. McCoo, Jr., to oppress, defame, and to cause a compounding of mental assaults, mental aggravation, intimidation, and hardship, against the Plaintiff Samuel N. McCoo, Jr., and to deprive the Plaintiff Samuel N. McCoo, Jr. of his rights in violation of Title 18 U.S.C. 242, 1986 with the willful, reckless, and malicious intent to misrepresent the Plaintiff Samuel N. McCoo, Jr., to others in an Official Government capacity, and to defame the Plaintiff Samuel N. McCoo, Jr., in violation of Title 18 U.S.C. 1001. The Defendant District of Columbia Government Authority (Mr. Lavirt Durrett) did so in violation of the Constitution of the United States, Constitutional Amendment 4, Amendment 5, Amendment 9, and Amendment 14 Section 1.

8 From May 1989 to August 1989 the Plaintiff Samuel N. McCoo, Jr. Contested the Personnel Performance Rating and addressed the Defendant District of Columbia Government Authorities (Mr. Harry Void, Mr. Archie Little, Mr. Jack Yaag, Mr. Harold Henson, Mr. John Touchstone) and informed them of the Personnel Performance Rating and requested that the rating be changed. The Defendant District of Columbia Government Authorities (Mr. Harry Void, Mr. Archie Little, Mr. Jack Yaag, Mr. Harold Henson, Mr. John Touchstone) intentionally and recklessly neglected to stop the action, in violation of Title 18 U.S.C. Section 1986, taken against the Plaintiff Samuel N. McCoo, Jr. and conspired, in violation of Title 18 U.S.C. Section 241, Section 242, Section 371, to do so and instead subjected the Plaintiff Samuel N. McCoo

Jr. to unnecessary mental aggravation and distress. The Defendant District of Columbia Government Authorities (Mr. Harry Void, Mr. Archie Little, Mr. Jack Yaag, Mr. Harold Henson, Mr. John Touchstone) committed intentional negligence, denied the rights of the Plaintiff Samuel N. McCoo Jr., in violation of the United States Constitution, in violation of Constitutional Amendment 5, Amendment 9, and Amendment 14 Section 1.

9. In June 1989 the Defendant District of Columbia Government Authorities (Mr. Lavirt Durrett, Mr. Harry Void) with premeditation assaulted mentally the Plaintiff Samuel N. McCoo, Jr., in violation of Title 18 U.S.C Section 113, charging and documenting the Plaintiff Samuel N. McCoo Jr. falsely as not following Personnel

Regulations with the intent by fraudulent means, in violation of Title 18 U.S.C. Section 1001, to intimidate, defame, oppress, and misrepresent, the Plaintiff Samuel N. McCoo Jr., and conspired to do so in violation of Title 18 U.S.C. Section 241, Section 242, Section 371, and Section 1986, to cause further assault, personal and professional injury to the Plaintiff Samuel N. McCoo Jr., violating the United States Constitutional rights of the Plaintiff Samuel N. McCoo Jr., in violation of Constitutional Amendment 1, Amendment 4, Amendment 5, Amendment 9, and Amendment 14 Section 1.

10. The Plaintiff Samuel N. McCoo Jr. in December 1989 had requested incentive awards for the modification of which he proposed to the Defendant District of Columbia Government of which

his proposal had been already accepted and utilized in and continuing since 1988 for the modification of the Dissolved Air Flotation Thickening Systems at the Blue Plains Waste Water Treatment Facility. On or About January 8, 1990, the Defendant District of Columbia Government Authorities (Mr. Lavirt Durrett, Mr. David White) committed fraud, in violation of Title 18 U.S.C. Section 1001 against the Plaintiff Samuel N. McCoo Jr., to assault and intimidate, in violation of Title 18 U.S.C. Section 113 the Plaintiff Samuel N. McCoo Jr., in retaliation for requesting incentive awards, falsely accusing the Plaintiff Samuel N. McCoo, Jr. of violating Personnel Regulations and documenting such false actions so charged, to misrepresent and defame, in violation of Title 18 U.S.C. 1001, the Plaintiff

Samuel N. McCoo Jr., personally and professionally, and conspired to further actions taken against the Plaintiff Samuel N. McCoo, Jr., in violation of Title 18 U,S.C. Section 241, Section 242, Section 371, Section 1986 and in violation of the United States Constitution, violating the rights of the Plaintiff Samuel N. McCoo, Jr., blatantly with negligence disregarded with malicious intent, in violation of the United States Constitution, in violation of Constitutional Amendment 1 Amendment 4, Amendment 5, Amendment 9, and Amendment 14 Section 1.

11. On or about January 9, 1990 Defendant District of Columbia Government Authority (Mr. Jack Yaag) stated that he would have an evaluation of suggestion done for the modification. It had been approximately one year and a

half prior to this time since the modification had been proposed and equipment had been installed on all Dissolved Air Flotation Thickening Systems based on the proposal of the Plaintiff Samuel N. McCoo Jr. Defendant District of Columbia Government Authority (Mr. Jack Yaag) had intentionally neglected the complaints of the Plaintiff Samuel N. McCoo Jr., violated the Constitutional Rights of the Plaintiff Samuel N. McCoo, Jr., in violation of Amendment 5, Amendment 9, and Amendment 14 Section 1.

12. In February 1990, the Plaintiff Samuel N. McCoo Jr. was told by Defendant District of Columbia Government Authority (Mr. Harry Void) he was going to be transferred due to a lack of manpower in another section of the division of which he works. The

Plaintiff Samuel N. McCoo, Jr. addressed the issue as to the reason he was being transferred and subsequently the Plaintiff was not transferred.

13. In February 1990, the Plaintiff Samuel N. McCoo, Jr. inquired to the Defendant District of Columbia Government Authority (Mr. Jack Yaag) concerning the modification proposed by the Plaintiff. In April 1990 the Plaintiff was falsely accussed by Defendant District of Columbia Government Authorities (Mr. Lavirt Durrett, Mr. Harry Void, Mr. Archie Little, Mr. Peter Kreglogh, Mr. Jack Yaag) of violating Personnel Regulatios and threatened that if the Plaintiff Samuel N. McCoo Jr. continued that adverse action would be taken against him. Defendant District of Columbia Government Authorities (Mr. Lavirt

Durrett, Mr. Harry Void, Mr. Archie Little, Mr. Peter Kreglogh, Mr. Jack Yaag) assaulted mentally, in violation of Title 18 Section 113, the Plaintiff Samuel N. McCoo Jr., fraudalently documented as violating Personnel Regulations, in violation of Title 18 Section 1001, misrepresented the Plaintiff Samuel N. McCoo Jr., in violation of Title 18 Section 1001, and conspired to do so in violation of Title 18 Section 241, Section 242, Section 371, Section 1512, Title 42 Section 1983, Section 1986. Defendant District of Columbia Government Authorities (Mr. Lavirt Durrett, Mr. Harry Void, Mr. Archie Little, Mr. Peter Kreglogh, Mr. Jack Yaag) violated the Constitutional Rights of the Plaintiff Samuel N. McCoo Jr., in violation of Constitutional Amendment 1, Amendment 4, Amendment 5, Amendment 9, Amendment 14 Section 1.

14. In March 1990 the Plaintiff Samuel N. McCoo, Jr. addressed Defendant District of Columbia Government Authorities (Mr. Harold Henson) in an attempt to resolve the problems of which the Plaintiff Samuel N. McCoo, Jr. was addressing. No response was received from Defendant District of Columbia Government Authority (Mr. Harold Henson). District of Columbia Government Authority (Mr. Harold Henson) intentionally committed negligence in violation of the United States Constitution Amendment 1, Amendment 5, and Amendment 14 Section 1. The Defendant District of Columbia Government Authority was intentionally and recklessly negligent.

15. In March 1990 the Defendant District of Columbia Government Authorities (Mr. Harry Void, Mr. Archie

Little, Mr. Jack Yaag) coerced the Plaintiff in to a meeting with Defendant District of Columbia Government Authorities (Mr. Harry Void, Mr. Archie Little, Mr. Jack Yaag) of which the Defendant District of Columbia Government Authority (Mr. Jack Yaag) stated that the behavioral actions of the Plaintiff were irrational and he the Plaintiff Samuel N. McCoo, Jr. was in need of counseling service and some of the actions of the Plaintiff Samuel N. McCoo Jr. were in violation of Personnel Regulations and threatened that if the Plaintiff Samuel N. McCoo Jr. continued with those actions , adverse and corrective action would be taken against the Plaintiff Samuel N. McCoo Jr. The Defendant District of Columbia Government Authorities (Mr. Harry Void, Mr. Archie Little, Mr. Jack Yaag) assaulted, in violation of Title 18

U.S.C. 113, the Plaintiff Samuel N. McCoo, Jr. to fraudulently misrepresent, and defame, in violation of Title 18 U.S.C. Section 1001 and conspired to do so in violation of Title 18 U.S.C. Section 241, Section 242, Section 371 to further the attacks against the Plaintiff Samuel N. McCoo, Jr., in violation the United States Constitution, violating and denying the Constitutional Rights of the Plaintiff Samuel N. McCoo, Jr. Constitutional Amendment 1, Amendment 4, Amendment 5, Amendment 9, and Amendment 14 Section 1. in retaliation against the Plaintiff Samuel N. McCoo, Jr. exercising and attempting to maintain his rights. The Plaintiff Samuel N. McCoo, Jr. inquired as to the kind of counseling was being recommended and what actions were perceived as being abnormal and violating Personnel Regulations, but

received no response. Defendant District of Columbia Government Authorities (Mr. Harry Void, Mr. Archie Little, Mr. Jack Yaag) neglected the rights of the Plaintiff Samuel N. McCoo Jr.

16. In April 1990 the Plaintiff Samuel N. McCoo Jr., Communicated with the Defendant District of Columbia Government Authority (Mr. John Touchstone, Ms. Nadine P. Winter) in an attempt to resolve the matters and concerns of the Plaintiff Samuel N. McCoo Jr. The Defendant District of Columbia Government Authority (Mr. John Touchstone, Ms. Nadine P. Winter) did not respond intentionally neglecting the Rights of the Plaintiff Samuel N. McCoo Jr.

17. In April 1990, the Plaintiff Samuel N. McCoo, Jr. was transferred without justification. The Plaintiff

Samuel N. McCoo, Jr. requested the specific reason of his transfer, the Defendant District of Columbia Government Authority (Mr. Jack Yaag) told the Plaintiff that he was being transferred because of controversy. The Defendant District of Columbia Government Authority denied the Constitutional Rights of the Plaintiff, violating Constitutional Amendment 1, Amendment 4, Amendment 5, Amendment 9, Amendment 14 Section 1., and negligently with malicious intent to assault the Plaintiff Samuel N. McCoo, Jr., recklessly displaced the Plaintiff Samuel N. McCoo, Jr., isolating him from major areas of the Blue Plains Waste Water Treatment Facility and the the Plaintiff Samuel N. McCoo Jr., was assigned to work under a person of whom retained less seniority and experience. The Defendant District of Columbia

Government Authorities Committed these acts to cause personal and professional harm to the Plaintiff Samuel N. McCoo, Jr., to assault him in retaliation for addressing valid concerns, and conspired to further attacks in violation of Title 18 U.S.C. Section 241, Section 242, Section 371.

18. In May 1990, the Defendant District of Columbia Government Authority (Mr. Jack Yaag) told the Plaintiff that his proposed modification was not viable and made comment that it would not be viable, but, the Defendant District of Columbia Government Authority would provide an Apprentice Electrician and equipment to install the proposed modification on a DAF unit to prove that the modification works, accompanied with an ultimatum. After continued Assault, harassment, and

Defamation on the Plaintiff, creating a non conducive environment for successful installation of the modification by the Plaintiff Samuel N. McCoo, Jr. By this time it was almost two years later and equipment had already been installed on all Dissolved Air Flotation Systems. The Defendant District of Columbia Government Authority (Mr. Jack Yaag) intentionally neglected the proposed modification and then wanted to force the plaintiff into submission by ultimatum. The Defendant District of Columbia Government Authority (Mr. Jack Yaag) violated the Constitutional Rights of the Plaintiff Samuel N. McCoo Jr., in violation of Constitutional Amendment 4, Amendment 5, Amendment 9, amendment 14 Section 1. and conspired with the intent to deny the rights of the Plaintiff Samuel N. McCoo Jr., in violation of Title 18 U.S.C. Section 241, Section

242, section 371, section 1512, section 1986, and committed fraud to misrepresent and did so misrepresent in violation of Title 18 U.S.C. 1001.

19. In September 1990 the Plaintiff wrote a complaint to the Defendant District of Columbia Government Officials (Mayor Marion Barry, the Council of the District of Columbia, and Carol Thompson the City Administrator) for help to clear up and resolve his dilemma. Only one District of Columbia Government Authority responded, the Office of then CouncilMember John Wilson. The respondent District of Columbia Government Authority requested information from the Plaintiff, of which the Plaintiff did provide. After which the Plaintiff made several inquiries as to the status of his concern. The Defendant District of Columbia

Government Authority of which did respond told the Plaintiff that if he did not hear anything referencing his concerns then he will not and disconnected COMMUNICATION from the Plaintiff. The Defendant District of Columbia Government Authorities intentionally neglected the concerns of and Plaintiff Samuel N. McCoo Jr., violating the Constitutional rights of the Plaintiff Samuel N. McCoo Jr., Constitutional Amendment 1, Amendment 4, Amendment 5, and Amendment 14 Section 1., Foresaked the Publics Trust, and intentionally failed to up hold the laws of the Constitution of the United States and the District of Columbia.

20. The District of Columbia Government Authority of which responded Obstructed Justice of which aided and supported the actions taken against the

Plaintiff Samuel N. McCoo, Jr., violating the Plaintiff's Constitutional Rights.

21. In August 1990 the Defendant District of Columbia Government Authority (Mr. Harry Void) accused the Plaintiff of wrong doing and had money removed from the pay of the Plaintiff Samuel N. McCoo, Jr. by fraudulent means violating Title 18 U.S.C. Section 1001 and misrepresenting the Plaintiff Samuel N. McCoo, Jr., in violation of Title 18 U.S.C. Section 1001. These actions violated the United States Constitution and the Constitutional Rights of the Plaintiff Samuel N. McCoo, Jr., Constitutional Amendments 5, Amendment 9 and Amendment 14 Section 1.

22. In November 1990 the Defendant District of Columbia Government Authority (Mr. Harold Henson responded

to a request of the Plaintiff Samuel N. McCoo Jr., stating and attaching what was allegedly an evaluation of the proposed modification proposed by the Plaintiff Samuel N. McCoo Jr., allegedly evaluated by Defendant District of Columbia Government Authorities (Mr. Leonard Benson, Mr. Sam Elamin). In December 1990 the Defendant District of Columbia Government Authority (Mr. John Touchstone) stated that the proposed modification by the Plaintiff was not viable and totally disclaimed the acceptance of the modification of which the Plaintiff had proposed in June 1988. The Plaintiff addressed the action of the Defendant District of Columbia Government Authority (Mr. John Touchstone) and received no response. The Defendant District of Columbia Government Authority (Mr. John Touchstone) intentionally neglected the

concerns of the Plaintiff Samuel N. McCoo Jr., violating the United States Constitution in violation of Constitutional Amendment 1, Amendment 4, Amendment 5, Amendment 9, Amendment 14 Section 1., and conspired to do so, in violation of Title 18 Section 241, Section 242, Section 371, section 1512, Section 1986.

23. In February 1991 the Plaintiff Samuel N. McCoo, Jr. notified the Mayor of the District of Columbia Government, Defendant District of Columbia Government Authority (Mrs. Sharon Pratt Kelly (Dixon)). The Plaintiff Samuel N. McCoo, Jr. Received no response from the Mayor of the District of Columbia, however, the Plaintiff did receive in May 1991 statements related to his issues from the Defendant District of Columbia Authority (Ms. Betty Hager

Francis) who intentionally and negligently with the intention to intimidate and assault mentally the Plaintiff Samuel N. McCoo, Jr., in violation of Title 18 U.S.C. Section 113 and denied and violated the Constitutional Rights of the Plaintiff Samuel N. McCoo Jr., in violation of the United States Constitution Amendment 1, Amendment 4, Amendment 5, Amendment 9, Amendment 14 Section 1, and conspired to do so, in violation of Title 18 U.S.C. Section 241, Section 242, Section 371, Section 1512, Section 1986.

24. In August 1989 the Plaintiff filed for an Impartial Review of the Personnel Performance Rating on the basis of the rater being bias, showing favoritism, and that no standards were utilized to fairly evaluate the performance of the Plaintiff Samuel N.

McCoo, Jr. The Plaintiff requested an increased Rating to Outstanding. In October 1989 Plaintiff received acceptance of an Impartial Review of his complaint that he was given unfairly a personnel performance rating. Between October 1989 to June 1990 the Plaintiff inquired many times about when the Impartial Hearing would be held making it known that another performance rating period has/is passing and he will again be subjected to this process again without there being any standards. In July 1990 the Defendant District of Columbia Government intentionally attempted to intentionally influence the Plaintiff into relinquishing his Constitutional Rights, in violation of Title 18 U.S.C. Section 241, Section 242.

25. In August 1990 the Defendant

District of Columbia Government Authorities (Personnel Rating Impartial Review Committee) with intentional negligence sent the Plaintiff a notice, stating that the Plaintiff did not appear for a scheduled hearing and demanded the Plaintiff submit a statement as to the reason why, being intentionally and recklessly negligent with the intent to assault and intimidate, in violation of Title 18 U.S.C. Section 113, the Plaintiff Samuel N. McCoo Jr., violating the Constitutional Rights of the Plaintiff Samuel N. McCoo Jr., in violation of Constitutional Amendment 5, Amendment 9, Amendment 14 Section 1.

26. Defendant District of Columbia Government Authorities held a Pre Hearing Conference on October 10 1990 and a Hearing on November 28, 1990, both

were conducted as if in a courtroom. From October to about March the Plaintiff Samuel N. McCoo Jr., requested all the information, unaltered, which was alleged to have been submitted against the Plaintiff Samuel N. McCoo Jr., including the recordings of both hearings pursuant to the Freedom of Information Act. The Defendant District of Columbia Government Authorities refused to grant the request of the Plaintiff Samuel N. McCoo Jr., denying and violating his Constitutional Rights under the Constitution of the United States, in violation of Constitutional Amendment 4, Amendment 5, Amendment 9, and Amendment 14 Section 1., and conspired to do so, in violation of Title 18 U.S.C. Section 241, Section 242, Section 371. 27. In April 1991 the Defendant District of Columbia Government (Personnel Performance Rating

Impartial Review Committee) with premeditation maliciously with intentional negligence rendered a decision against the Plaintiff Samuel N. McCoo, Jr. for an increased performance rating for the period 1988 to 1989 and Defendant District of Columbia Government Authorities (Personnel Rating Impartial Review Committee) blatantly admitted that the Plaintiff was correct in his charges that there were no standards to determine a fair performance rating of the Plaintiff Samuel N. McCoo Jr., Defendant District of Columbia Government Authority (Personnel Performance Impartial Review Committee) conspired, in violation of Title 18 U.S.C. Section 241, Section 242, Section 371, Section 1512, Section 1986. Defendant District of Columbia Government Authorities with the malicious intent to suppress, oppress,

assault with intent to intimidate mentally, in violation of Title 18 U.S.C. 113, to misrepresent, in violation of Title 18, U.S.C 1001, the Plaintiff and cause irreparable damage to the Plaintiff Samuel N. McCoo Jr., as a result of the Plaintiff Samuel N. McCoo Jr. exercising his rights and proposing a modification of which the Plaintiff Samuel N. McCoo Jr. proposed to provide the government with substantial savings. The Defendant District of Columbia Government Authorities (Personnel Performance Rating Impartial Review Committee) then directed the Plaintiff Samuel N. McCoo Jr. to the Defendant District of Columbia Government Authorities (Office of Employee Appeals) with the Stipulation that the Plaintiff only had fifteen days to file an appeal.

28. In August 1991 the Defendant District of Columbia Government Authority (Office of Employee Appeals, Mr. Daryl Hollis) held a Pre-Hearing Conference, of which the Defendant District of Columbia Government Authority (Office of Employee Appeals, Mr. Daryl Hollis) aided the Defendant District of Columbia Government Agency (Public Works), totally ignored the absence of other Defendant District of Columbia Government Authority defendants (Office of Personnel, Personnel Performance Rating Impartial Review Committee), and denied the rights of the Plaintiff Samuel N. McCoo Jr., to communicate with an authorized official representative of the Defendant District of Columbia Government in an attempt, in good faith to resolve the claims of the Plaintiff Samuel N. McCoo Jr., and instead allowed the initiator of the

issues to represent the Defendant District of Columbia Government Agency (Department of Public Works), in violation of Title 18 U.S.C. Section 1512, Section 1986, at the Pre-Hearing not adhering to the procedures established, disregarding the law, and violating the Constitutional Rights of the Plaintiff Samuel N. McCoo Jr., and denied the Constitutional rights of the Plaintiff Samuel N. McCoo Jr., in violation of the United States Constitution, Constitutional Amendments 1, Amendment 4, Amendment 5, Amendment 9, and Amendment 14 Section 1., and did so violate the rights of the Plaintiff Samuel N. McCoo, Jr., in violation of Title 18 U.S.C. Section 113, Section 241, Section 242, Section 371, Section 1512, Section 1001, Title 42 Section 1983, Section 1986.

29. In September 1991 the Defendant District of Columbia Government Authority (Office of Employee Appeals, Mr. Daryl Hollis) rendered a decision of the claims of the Plaintiff Samuel N. McCoo, Jr., in favor of the Defendant District of Columbia Government Authorities, ignored PRIMA FACIA EVIDENCE, did not conduct a formal hearing and ordered conditions that would subject the Plaintiff Samuel N. McCoo Jr. to a circumstance of DOUBLE JEOPARDY and continual abuse from the Defendant District of Columbia Government Authorities. Denying the Constitutional Rights of the Plaintiff Samuel N. McCoo Jr., in violation of Constitutional Amendment 1, Amendment 4, Amendment 5, Amendment 9, Amendment 14 Section 1., and violated Title 18 U.S.C. Section 113, Section 241, Section 242, Section 371, Section 1001, Section 1512,

Title 42, Section 1983, Section 1986.

30. In October 1991 Plaintiff Samuel N. McCoo Jr., contested the decision made by the Defendant District of Columbia Government Authority (Office of Employee Appeals, Mr. Daryl Hollis). The Defendant District of Columbia Government Authority continued to intentionally ignore the facts of the complaint, the evidence submitted, and the Plaintiff Samuel N. McCoo Jr., Denying the Constitutional Rights of the Plaintiff Samuel N. McCoo Jr. contested the actions of the Defendant District of Columbia Government Authority (Office of Employee Appeals) and received no response. The Defendant District of Columbia Government Authorities (Office of Employee Appeals) were intentionally negligent with the complaint from the Plaintiff Samuel N. McCoo Jr., in

violation of the United States Constitution, in violation of Constitutional Amendment 1, Amendment 5, Amendment 9, Amendment 14 Section 1., and in violation of Title 18 U.S.C. Section 241, Section 242, Section 371, Section 1512, Title 42 Section 1983, Section 1986.

31. In October 1990 the Plaintiff applied for a position vacancy, Computer Specialist. The Plaintiff Samuel N. McCoo, Jr. was denied the position vacancy by Defendant District of Columbia Government Authority (D.C. Office of Personnel Ms. Laurene Davis). From October 1990 to June 1991 Plaintiff consistently maintained communication with Defendant District of Columbia Government and requested the reason for his disqualification, and the standards by which the determination of the

disqualification was made against the Plaintiff Samuel N. McCoo Jr. Defendant District of Columbia Government Authorities (D.C. Office of Personnel) did not provide the standards, in violation of Constitutional Amendment 5, Amendment 9, and Amendment 14 Section 1., nor legitimate justification for disqualifying the Plaintiff for the vacant position.

32. In June 1991 Defendant District of Columbia Government Authority (D.C. Office of Personnel) closed the position vacancy, intentionally with negligence refused to address the grievance of the Plaintiff Samuel N. McCoo Jr., violating the Constitutional Rights of the Plaintiff Samuel N. McCoo Jr., in violation of Constitutional Amendment 1, Amendment 5, Amendment 9, Amendment 14 Section 1., and conspired to do so, in

violation of Title 18 Section 241, Section 242, Section 371, Section 1512, Title 42 Section 1983, Section 1986.

33. In October 1991 the Plaintiff Samuel N. McCoo, Jr. communicated to the Defendant District of Columbia Government Mayor Sharon Pratt Kelly (Dixon) for help and received no response. Intentionally neglecting the concerns of the Plaintiff Samuel N. McCoo, Jr., violating and denying the Constitutional Rights of the Plaintiff Samuel N. McCoo Jr., in violation of Constitutional Amendment 5, Amendment 9, Amendment 14 Section 1., and Title 42 Section 1983, Section 1986.

34. Soon After communicating to the Defendant District of Columbia Government Authority (Mayor Sharon Pratt Kelly (Dixon)), in October 1991 the Plaintiff Samuel N. McCoo Jr., was

documented by Defendant District of Columbia Government Authority (Mr. Harry Void) in November 1991, as violating personnel regulations twice within a period of a week and did so cause money to be withdrawn from the pay of the Plaintiff Samuel N. McCoo Jr., based on those false accounts of violations, in violation of Title 18 U.S.C. 1001. The Defendant District of Columbia Government Authority intentionally neglected the rights of the Plaintiff Samuel N. McCoo Jr., assaulted the Plaintiff Samuel N. McCoo Jr., in violation of Title 18 U.S.C. 113, and did charge and penalize the Plaintiff Samuel N. McCoo Jr., without regard of rights in violation of Title 18 U.S.C Section 241, Section 242, Section 371, Title 42 Section 1983, Section 1986, and in violation of the United States Constitution, denying and violating the

Constitutional rights of the Plaintiff Samuel N. McCoo Jr., Constitutional Amendments 1, Amendment 4, Amendment 5, Amendment 9 Amendment 14 Section 1.

35. From June 1988 to Present and continuing the Defendant District of Columbia Government Authorities have continually violated the United States Constitutional Rights of the Plaintiff Samuel N. McCoo Jr. as a result of the Plaintiff Samuel N. McCoo Jr. ;

1. Developing and proposing a modification for the Dissolved Air Flotation Thickening Systems, at the Blue Plains Waste Water Treatment Facility, to save the an estimated one million two hundred thousand dollars ($1,200,000.00) annually, and

2. the Plaintiff Samuel N. McCoo Jr., attempting to exercise and

protect his rights.

36 As a result the Plaintiff Samuel N McCoo Jr. has been continually assaulted by Defendant District of Columbia Government Authorities, continually Deprived of Rights, and Defamed. The Plaintiff sustained permanent damages, sustained deprivation of rights, defamation, suffered great pain of mind, hardship to family. Defendant District of Columbia Government Authorities have and continue to be intentionally negligent, and is in violation of Title 18 U.S.C. Section 1581, and continually violate Title 18 U.S.C. Section 241, Section 242, Section 371, Section 113, Section 1001, Title 42 Section 1983, Section 1985, Section 1986, and the Constitution of the United States, Constitutional Amendment 1, Amendment 4, Amendment 5, Amendment 9,

Amendment 13, and Amendment 14 Section 1

Wherefore the damages considered, the Plaintiff demands judgment against the District of Columbia Government in the amount of One Hundred Twenty-Five Million Dollars (125,000,000.00) Plaintiff Demands Trial by Jury.

Samuel N. McCoo, Jr.
3917-7TH Street, N.W.
Washington, D.C., 20011
(202) 882-8985, 882-0109 (H)
(202) 767-7496 (W)